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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 406

HUGH MILLER MERCER, *et al., Appellants,*

—against—

ARTHUR I. HEMMINGS, *et al., Appellees.*

No.

HERMAN W. BEVIS, *et al., Appellants,*

—against—

MARK W. EASTLAND, *et al., Appellees.*

ON APPEAL FROM THE SUPREME COURT OF FLORIDA

APPENDIX TO JURISDICTIONAL STATEMENT

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July 22, 1967.

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE

SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1966

HUGH MILLER MERCER, ET AL.,
Appellants,

vs.

ARTHUR I. HEMMINGS, ET AL.,
Appellees.

CASE No. 34,373

Opinion filed November 23, 1966

AN APPEAL FROM THE CIRCUIT COURT FOR ALACHUA COUNTY, JOHN A. H. MURPHREE, Judge

HERVEY YANCEY, CROMWELL A. ANDERSON, LOUIS BONSTEEL and SMATHERS & THOMPSON,
for Appellants

CHESTER BEDELL, for Appellees

ROBERTS, J.

This cause is before the court on appeal from a "Supplemental Decree Pursuant to Mandate" entered by the trial court following the going down of the mandate of this court in *Mercer v. Hemmings*, Fla. 1965, 170 So. 2d 33.

The facts of the case are stated in considerable detail in our former opinion. Among other things, it concerns

the validity of a regulation promulgated by the appellees, as members of the Florida State Board of Accountancy ("the Board" hereafter) respecting the issuance of temporary certificates to out-of-state firms to fulfill "specific engagements" for accounting services in this state under contracts entered into outside the state, as authorized by Section 473.14, Florida Statutes. The regulation in question—paragraph (3) of Rule 20-9.03 of the Board—was attacked in a suit for declaratory relief filed by the appellants, plaintiffs below, as members of the firm of Price Waterhouse & Co., a large firm of public accountants engaged in a nation-wide accounting business. All members of the firm are licensed as certified public accountants in one or more states of the union; however, none is licensed in Florida as a Certified Public Accountant, nor did any member reside in this state at the time the suit was filed.

Because of the stringency of our statutory regulations respecting the licensing of certified public accountants and the practice of public accounting in this state by such certified public accountants, Price Waterhouse has been unable to perform accounting services in this state for its out-of-state clients engaged in interstate commerce except under the authority of temporary certificates which were routinely issued to it by the Board for a great many years. In 1962, however, their "specific engagements" had grown to such an extent as to require the establishment of permanent offices in Miami and Tampa, and the permanent assignment of personnel to those areas. Upon learning of this, the Board adopted paragraph (3) of Rule 20-9.03, reading in part as follows:

> "Temporary certificates will not be issued to firms or persons maintaining a full time staff in the State of

> Florida, and using facilities for full time practice of public accounting as distinguished from fulfilling specific engagements under temporary certificates."

and notified Price Waterhouse that it would deny further temporary certificates as long as Price Waterhouse maintained a full time staff resident in Florida.

This suit for declaratory relief followed, in which Price Waterhouse sought a ruling either (1) that the above-quoted provision of Rule 20-9.03 and the statute taken together, as applied to Price Waterhouse, were invalid; or (2) that Price Waterhouse could continue its public accounting practice in this state so long as it did not hold itself out to the public as a firm of *Florida* certified public accountants. The second contention was made in reliance on the decision of this court in Florida Accountants Association v. Dandelake, Fla. 1957, 98 So. 2d 323. The defendant Board, appellees here, filed a counterclaim, asking the court to enjoin Price Waterhouse from practicing accounting in this state except under the temporary certificates theretofore issued by the Board or such other certificates as might thereafter be lawfully issued by the Board.

The trial court denied the relief sought by Price Waterhouse and granted that sought by the Board. On appeal to this court, the decree of the trial court was affirmed in part and reversed in part and the cause remanded to the lower court. Pursuant to our mandate, and after a hearing, the trial court entered its "Supplemental Decree Pursuant to Mandate," which decree has been brought here for review by Price Waterhouse. One of the complaints made here by the appellant is that the Supplemental Decree did not delete the injunction previously entered against Price Waterhouse, upon the counterclaim of the

Board, and simply stayed the enforcement thereof until such time as the members of the firm of Price Waterhouse could become certificated in this state by reciprocity or examination. By motion, the Board has asked this court to vacate the stay of injunction, for the reason that it is impossible, under existing statutory provisions, for Price Waterhouse to qualify each and every member of the firm for licensing as a Florida certified public accountant, by examination or by reciprocity, thereby making it impossible for the firm to engage in the practice of public accounting in this state except under temporary certificates.

The problem is not now new here. The activities of the Board have been before this court in Morgan v. Oosterhoudt (Fla. 1957) 96 So. 2d 139; Florida Accountants Association v. Dandelake (Fla. 1957) 98 So. 2d 323; Mercer v. Hemmings (Fla. 1964) 170 So. 2d 33, and now again in the Mercer case to review the judgment on remand of the trial court; also before the District Court of Appeal, First District, in Bevis v. Eastland (Fla. 1966) 186 So. 2d 818, now pending here on writ of certiorari.

In the case sub judice, the litigants have submitted a number of questions. After blowing the chaff from the grain, the controversy to be decided is:

(1) Is it necessary for all the partners in Price Waterhouse to hold Florida certificates in order for such firm to practice in this state?

(2) Is it lawful for a person holding a Florida certificate, to practice accounting thereunder by accepting employment from Price Waterhouse and selling their work product to Price Waterhouse for use in making the master audit of interstate clients?

(3) Are the members of Price Waterhouse entitled to the issuance of a reciprocal certificate upon dis-

playing a certificate issued by another state which does not necessarily have the same admission requirements as Florida and which members are not two-year residents of this state?

(4) Are members of Price Waterhouse, who do not meet the two-year residence requirements, but who meet the other admission requirements entitled to take the Florida examination?

(5) Does Price Waterhouse have the *right*, as distinguished from the *privilege*, to continue to receive temporary certificates notwithstanding Board Rule 20-9.03?

Upon the authority of Morgan v. Oosterhoudt, supra, we held that a non-resident firm of accountants cannot practice as a firm or under a firm name unless every member of such firm holds a Florida certificate. Section 473.23, Florida Statutes, among other things provides:

> "It is unlawful for any person holding a certificate as a certified public accountant, * * * to act as the representative, agent or manager, in the State of Florida, in connection with the practice of public accounting, of any person not authorized under the provisions of this chapter to practice public accounting in this state, or of any firm or association of persons, unless each member of such firm or association of persons shall be authorized to practice public accounting in this state under the provisions of this chapter; * * *".

However, this statute was certainly not intended to prevent a Florida certified public accountant from making audits

within this state under the employment of and for the use of accounting firms in other states in making master audits of clients engaged in interstate commerce. A contrary construction would put the constitutionality vel non of the statute in grave doubt under the constitutions of the United States and the State of Florida. It has long been the policy of this court, where possible, to place such construction on a statute as would preserve its constitutionality. In Morgan v. Oosterhoudt, supra, the view of this court was expressed in this language:

> "We do not think the statute prohibits a licensed Florida accountant from practicing public accounting in this state in his own name, even though he may have an interest in a non-resident firm of accountants; he is simply prohibited from practicing in this state *as a member* of such firm and from representing that such firm is practicing as 'Certified Public Accountants' unless the members thereof are Florida CPA's. This does not appear to be unreasonable in view of the fact that the qualifications prescribed for certified public accountants and the administration of such Acts must necessarily vary from state to state."

We now become concerned over the *right* in contrast with the *privilege* of the members of Price Waterhouse, all of whom hold certificates in some state, to have reciprocal certificates issued to them by the Florida Board. This identical question was decided by the District Court of Appeal, First District, in Bevis v. Eastland (April 28, 1966) 185 So. 2d 819, and we quote with approval from that decision:

Appendix A

"We will first dispose of petitioners' contentions that the action of the Board is '* * * in violation of petitioners' rights under the Florida and United States Constitution.' A concise definition of reciprocity is set out in Volume 36, Words and Phrases, Permanent Edition, p. 770, viz.: '"Reciprocity" denotes mutuality, or the relationship existing between states when each gives citizens of other certain favors or privileges that its own citizens enjoy at hands of other state; and applicant for certificate of registration as professional engineer has no vested right to have board issue him certificate merely because he held certificate of registration granted him by proper authorities in another jurisdiction.' Also see Spindel v. Jamison (1958), 199 Va. 954, 103 S. E. 2d 205, 208. Thus, it is apparent that the reciprocal certificates as outlined in the quoted statute are 'privileges', as distinguished from 'rights' which privileges have been authorized by the grace of the sovereign state of Florida. It necessarily follows that the grant of such privileges by the sovereign does not create a constitutional right in the applicants to practice their profession of accountancy in the state of Florida under Chapter 473, Florida Statutes, F. S. A.

"We next go to the question of whether the denial of the petitioners' applications for reciprocal certificates on the ground of nonresidency is contrary to fact and law. Petitioners take the position that Mercer v. Hemmings, as a matter of law, struck 'residence' as a prerequisite for qualifying under the statutory reciprocity provision and concluded that

the Board cannot consider such condition in weighing 'similar privileges' as set out in the statute authorizing the granting of reciprocal certificates. Such a contention cannot be sustained. In short, the Board has construed the reciprocal statute to mean that it authorizes the granting of a certificate to an applicant who was originally certified in another state, if that state would do likewise for a Florida resident who is in a similar situation. If such criterion is not met, the Board is well within its discretionary power to refuse to grant reciprocity, and we find in this record competent evidence to sustain the finding of the Board."

The rationale of our holding in Mercer v. Hemmings, 170 So. 2d 33, was that the lack of two years of residence would not operate to prevent an applicant otherwise qualified from taking the examination, nor from receiving a reciprocal certificate where the applicant is otherwise eligible and the state of certification does not require residence; but it was not our intention to eliminate residence as requirement of reciprocation where the state of certification requires residence.

The statute gives the Board wide discretion in the issuance of reciprocal certificates and also temporary certificates, but the Board must remember that this is not a unbridled discretion and the abuse of it can become a judicial question. We do not know from the record before us whether or not the Board has granted reciprocal certificates to some persons not employed by Price Waterhouse from states requiring residence and then refused to issue certificates to Price Waterhouse partners certified in the same states, but we do observe that there have been more than three hundred

reciprocal certificates issued. The vesting of discretion in any administrative agency carries with it much authority, but that authority is interwoven with responsibility to exercise such discretion in a not unreasonable manner. We cannot refrain from commenting that it does look a bit odd that over three hundred reciprocal certificates have been issued to other non-resident accountants, while every application considered of a partner in Price Waterhouse thus far has been denied. In this connection compare State ex rel. Markley v. Bartlett (Conn.) 32 A 2d 58.

The question then arises as to requirement for two years residence in Florida prior to the taking of the examination, where the applicant meets the other requirements. See Florida Statutes Sec. 473.08 (1 and 3). The regulation of the profession of accounting is an exercise of the police power, for the benefit and protection of the public and is not intended as economic protection for the profession from prospective competitors. Little, if any, reason can be found for requiring a certified public accountant of another state to cease his profession, close his office, and bask in the Florida sunshine for a period of two years before taking the examination. Successful and worthy persons in other states, the kind of citizens we want in Florida, are from a practical standpoint banned from ever becoming Florida Certified Public Accountants. Our state spends large sums of money each year advertising the advantages of Florida residence, and it would be strange indeed to invite people to reside here but deny them the privilege of taking a professional examination until a long period of residence could be established. Florida is not an island, nor is a visa or passport required of citizens of the United States upon entering it; nor is a visa certifying to two years of residence or clerkship within our borders required to enter a professional examination. We

hold that it is unreasonable to require two years of residence or clerkship within the state as a prerequisite, and the portion of the statute, so requiring, is unreasonable and void.

In State ex rel. James v. Gerrell (Fla.) 188 So. 812, the Court in striking down a residency requirement for an auctioneer's license said:

> "Section Eight of Chapter 18069 also provides that it shall not apply to any person who is a resident of Florida engaged in selling goods, wares, or merchandise for a period of twelve months in the year, provided said person, firm, or corporation shall have maintained and conducted an established place of business for such purposes, and has been engaged in such business for a period of not less than five years in the community wherein the auction sale is to be held.
>
> "Here we have a classification based on residence and the length of time one has been engaged in business. This Court has condemned classifications based solely on the ground of residence or on the difference of time the persons licensed have been engaged in business, and there appearing no other basis for this classification, we are impelled to hold it bad."

In Harper v. Galloway, 51 So. 226, 58 Fla. 255, 26 L. R. A. N. S., 794, 19 Ann. Cas. 235, the court struck down a law placing an additional burden on non-resident hunters of Marion County because it violated the Fourteenth Amendment of the Constitution of the United States. Again, in Hamilton v. Collins, (Fla.) 154 So. 201, this court struck down an ordinance exacting different license fee for selling bakery products in the city by a non-resident

because it violated the 14th Amendment to the Constitution of the United States and Section 12 of the Declaration of Rights. See also Accounting Corporation of America v. State Board of Accountancy (Calif.) 208 P. Rep. 2d 984, in which the Supreme Court of California said:

> "But where a statute discriminates against individuals or corporations solely because they are new to the field and such discrimination does not appear to have any relation to the public interest, the legislation disregards constitutional protections against arbitrary classification. Mayflower Farms v. Ten Eyck, 297 U. S. 266, 56 S. Ct. 457, 80 L. Ed. 675; Del Mar Canning Co. v. Payne, 29 Cal. 2d 380, 175 P. 2d 231; Van Harlingen v. Doyle, 134 Cal. 53, 66 P. 44, 54 L. R. A. 771; Soares v. City of Santa Maria, 38 Cal. App. 2d 215, 218, 100 P. 2d 1108; In re Fasset, 21 Cal. App. 2d 557, 69 P. 2d 865."

In Wormsen v. Moss, 29 N. Y. S. 2d 798, the Supreme Court of New York struck down a residence requirement as a prerequisite to the issuance of a license to act as a massage operator, and said (p. 801):

> "In so far as one is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Smith v. State of Texas, 233 U. S. 630, 636, 34 S. Ct. 681, 58 L. Ed. 1129, L. R. A. 1915D, 677, Ann. Cas. 1915D, 420. That broad affirmation of our respect for the free right to labor is subject to the qualification that the right may be interfered with by the state, in

the exercise of its general police power, in the interests of health, morals, safety or welfare of the community. Such action of the state must, however, be reasonable, bear a just and reasonable relation to the promotion of the general welfare, and avoid arbitrary discrimination between persons. A statute enacted in the exercise of the police power must have been passed to prevent some manifest evil or to preserve public health, morals, safety or welfare. The test is always whether the regulation is reasonable within those limits. Smith v. State of Texas, supra; Burns Baking Co. v. Bryan, 264 U. S. 504, 44 S. Ct. 412, 68 L. Ed. 813, 32 A. L. R. 661; People v. Crane, 214 N. Y. 154, 108 N. E. 427, L. R. A. 1916D, 550, Ann. Cas. 1915B, 1254, affirmed, 239 U. S. 195, 36 S. Ct. 86, 60 L. Ed. 218; Ives v. South Buffalo Railway Co. 201 N. Y. 271, 94 N. E. 431, 34 L. R. A. N. S. 162, Ann. Cas. 1912B, 156; . . . . .

". . . Classification as between citizens and aliens is permissible, but the classification must have some reasonable basis in the welfare of the community."

The court then recited from Miller v. City of Niagara Falls, 207 App. Div. 798, 202 N. Y. S. 549), and also recited from Magnani v. Harnett, 257 App. Div. 487, 14 N. Y. S. 2d 107, affirmed 282 N. Y. 619, 25 N. E. 2d 395:

". . . In the present case the relator's business is in no way injurious to the morals, the health, or even the convenience of the community, provided only he has the requisite knowledge upon the subjects prescribed by the legislature to practice his calling without endangering the health of his patrons."

We think the language taken from the Magnani case, supra, applies here. So long as the certified public accountant is otherwise qualified, we see no way in which his lack of two years' residence can be injurious to the morals, health, safety or welfare of the community.

We know from experience here that there are many overlapping and conflicting statutes and rules regulating the professions and regulated and unregulated vocations. For example: Between medical doctors, dentists, osteopaths and chiropractors; also between architects and engineers; lawyers and licensed realtors in the handling of real estate transactions, certified public accountants, uncertified accountants and bookkeepers; registered nurses and practical nurses; barbers and beauticians, licensed masseurs and reducing gymnasiums, and so on. It has been necessary in the judicial process to resolve these conflicts by the application of a reasonable interpretation in the construction of the conflicting regulations. Compare: Keyes Co. v. Dade County Bar Association (Fla. 1950) 46 So. 2d 605, and Florida Board of Massage v. Underwood (Fla. 1950) 45 So. 2d 184; 17 ALR (2d) 1181. And so it is that almost always the question of whether or not certain conduct falls within the condemnation of the regulatory statute is a mixed question of law and fact. In this case, the chancellor, after hearing voluminous testimony, held:

> "The accounting services that have been rendered by the plaintiff partners in Florida under such temporary certificates and that are being rendered by plaintiff partners in Florida and in which plaintiff partners' Florida employees are engaged and in which plaintiff partners' Florida offices are used, were not and are not ordinary or routine accounting services

such as are or may lawfully be performed by bookkeepers but were and are services that only certified public accountants or public accountants are qualified and eligible to perform, consisting of the examination and auditing of books, statements and other records prepared and kept by others, and the preparation of reports of such examinations and audits, including certificates and expressions of opinions as to the correctness and fairness of the matters certified, and consisting in large part of the preparation and certification of reports and statements to be filed with public agencies of the Federal Government, the State of Florida and other governmental agencies requiring certification of such statements by independent public accountants, as well as the preparation and certification of financial statements to be presented to banks and other lending institutions in connection with applications for loans or extensions of credit. The work performed by these Florida employees was and is performed under the supervision of one or more of the plaintiff partners."

We agree that such finding of fact is supported by the record, and constitutes a violation of the statute.

We now come to the last material question, as to whether or not the Board has the power to refuse temporary certificates. Florida Statute 473.14 provides:

"473.14 *Temporary certificate.*—The board may, in its discretion, adopt rules and regulations providing for the issuance of temporary certificates to persons for the purpose of enabling such persons to fulfill specific engagements or employments, the con-

tracts for which were entered into beyond the limits of the state."

What we have said previously in this opinion concerning "discretion" applies here, but we hold that Section 473.14 is a valid exercise of legislative power and that Rule 20-9.03, on its face is within the lawful power of the Board.

In summary, we hold:

1. It is necessary for all partners in Price Waterhouse to hold a Florida certificate before the firm can practice as certified public accountants in this state.

2. It is lawful for a person holding a Florida certificate to practice accounting thereunder, accepting employment from Price Waterhouse as a client and selling their work product to Price Waterhouse for use in making the master audit of inter-state clients.

3. The members of Price Waterhouse are not entitled, as a matter of right, to the issuance of a reciprocal certificate upon displaying a certificate issued by another state which does not necessarily have the same admission requirements as Florida, but are entitled to a fair and reasonable exercise of the Board's discretion.

4. Members of Price Waterhouse who do not meet the two-year residence requirement, but who meet the other admission requirements, are entitled to take the Florida examination, because the section of the statute requiring two years' residence is void.

5. Price Waterhouse does not have the *right*, as distinguished from the *privilege*, to continue to receive temporary

certificates notwithstanding Board Rule 20-9.03, but they are entitled to have the impartial and reasonable exercise of the Board's discretion.

Nothing in this opinion shall be construed as receding from any part of the decision of this court in Florida Accountants' Association v. Dandelake, (Fla. 1957), 98 So. 2d 323.

This litigation originated in a court of equity. The continuity of important business institutions requires that a reasonable time, to be fixed by the chancellor, be allowed for the Florida clients of Price Waterhouse to make an appropriate transition of their business and to allow time for persons involved in this case, so desiring and qualified, to stand the examination for a C.P.A. Certificate.

Accordingly, the cause is affirmed in part and reversed in part and remanded to the chancellor for further consideration not inconsistent with this opinion.

It is so ordered.

THORNAL, C. J., THOMAS, O'CONNELL, CALDWELL and ERVIN, JJ., and KANNER, District Court Judge (Retired), concur

Appendix A

IN THE

SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1967

WEDNESDAY, FEBRUARY 22, 1967

HUGH MILLER MERCER, ET AL., *Appellants,* vs. ARTHUR I. HEMMINGS, ET AL., *Appellees.*	Case No. 34,373

On consideration of the Petition for Rehearing filed by Attorneys for Appellant,

IT IS ORDERED by the Court that said Petition be, and the same is hereby, denied.

A True Copy
TEST:

SID J. WHITE

Sid J. White

Clerk Supreme Court.

cc: Messrs. Smathers & Thompson
Messrs. Bedell, Bedell, Dittmar & Smith
Honorable Raymond E. Rhodes

Appendix A

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE

SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1966

HERMAN W. BEVIS, et al., individually and as partners doing business under the firm name of Price Waterhouse & Co.,

Petitioners,

vs.

MARK W. EASTLAND, et al.,

Respondents.

CASE No. 35,360

Opinion filed November 23, 1966

Writ of Certiorari to the District Court of Appeal, First District

Harvey Yancey, Cromwell A. Anderson, Louis S. Bonsteel and Smathers & Thompson, for Petitioners

Chester Bedell, Ronald L. Palmer and Bedell, Bedell, Dittmar & Smith, for Respondents

ROBERTS, J.

We here review by certiorari a decision of the District Court of Appeal, First District, affirming a ruling by the State Board of Accountancy denying reciprocal certificates

to certain persons for various reasons. See Bevis v. Eastland (DCA 1) 186 So. 2d 818.

The petition for certiorari was buttressed by a certificate of the District Court that the case passes upon a question of great public interest, and we therefore have jurisdiction under Article V, Section 4(2), Constitution of Florida.

The factual background, questions presented and final decision appear in the opinion of the District Court. We have considered their decision in the light of the decision of this court, this day filed, in Mercer v. Hemmings,—So. 2d —, and finding no error in the decision of the District Court their opinion is adopted as the view of this court and the writ of certiorari heretofore issued is discharged.

It is so ordered.

THORNAL, C. J. THOMAS, DREW, CALDWELL, ERVIN and SEBRING (Retired), JJ., concur

Appendix A

IN THE

SUPREME COURT OF FLORIDA

JANUARY TERM, A. D. 1967

WEDNESDAY, FEBRUARY 22, 1967

HERMAN W. BEVIS, ET AL., *Petitioners*, vs. MARK W. EASTLAND, ET AL., *Respondents.*	CASE No. 35,360

On consideration of the Petition for Rehearing filed by Attorneys for Petitioners,

IT IS ORDERED by the Court that said Petition be, and the same is hereby denied.

A True Copy

TEST:

SID J. WHITE
Sid J. White
Clerk Supreme Court.

cc: Messrs. Saunders & Thompson
Messrs. Bedell, Bedell, Dittmar & Smith
Honorable Raymond E. Rhodes

Appendix A

IN THE

DISTRICT COURT OF APPEAL

FIRST DISTRICT, STATE OF FLORIDA

JANUARY TERM, A. D. 1966.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND DISPOSITION THEREOF IF FILED.

HERMAN W. BEVIS, et al., individually and as partners doing business under the firm name of Price Waterhouse & Co.,

Petitioners,

vs.

MARK W. EASTLAND, ARTHUR I. HEMMINGS, JAMES D. A. HOLLEY, BENJAMIN E. JAMES and CHARLES W. JOHNSON, JR., as members of and constituting the State Board of Accountancy, etc.,

Respondents.

CASE NO. H-17

Opinion filed April 28, 1966.

Petition for Writ of Certiorari to the State Board of Accountancy.

Smathers and Thompson for Petitioners.

Bedell, Bedell, Dittmar & Smith for Respondents.

RAWLS, Chief Judge.

The partners of Price Waterhouse & Co., an accounting firm, filed their individual applications with the State

Appendix A

Board of Accountancy seeking the status of certified public accountants in the State of Florida by reciprocity. Each of the applicants take the position he is entitled to such status as a matter of law by reason of the provisions of Section 473.19, Florida Statutes, which provides:

"The board may, in its discretion, issue a certificate as a certified public accountant to any applicant who holds a valid and unrevoked certificate as a certified public accountant issued by, or under the authority of, another state or political subdivision of the United States, or who holds a valid and unrevoked certificate as a chartered accountant issued by, or under the authority of, a foreign country; provided, the applicant has complied with the provisions of this chapter and the rules of the board. The board shall not be required to issue any certificate under the provisions of this section unless:

"(1) The original certificate was secured as the result of an examination which in the judgment of the board was the equivalent of the standard established by it, and,

"(2) The applicant has been engaged in the practice of public accountancy in Florida as a full time employee of a certified public accountant, as defined in this chapter, for a period of two years, and is a resident, having resided continuously in the state for a period of two years, and,

"(3) The state or country issuing the original certificate grants similar privileges to persons holding certificates as certified public accountants issued under the laws of this state, and,

Appendix A

"(4) The board is otherwise fully satisfied as to the moral and technical fitness of the applicant."

The Board denied seven applications on the following grounds, viz.:

1. As to each of the seven applicants upon the ground that they were not residents of the State of Florida.

2. As to six of the several applicants, upon the additional ground that the states wherein they were originally certified did not grant "similar privileges" to Florida C.P.As. as required by Section 473.19(3).

Petitioners by the instant petition for writ of certiorari assert that the Board unlawfully denied the applications in that:

(1) The denial on the ground of nonresidency is contrary to law, is in direct conflict with the decisions of the Supreme Court, and is in violation of petitioners' rights under the constitutions of Florida and of the United States.

(2) The denial of the applications on the ground of lack of similar privileges of reciprocity to Florida accountants is contrary to fact and law, is in conflict with the decision of the Supreme Court and is in violation of petitioners' rights under the constitutions of Florida and of the United States.

We will first dispose of petitioners' contentions that the action of the Board is "... in violation of petitioners' rights under the Florida and United States Constitution." A concise definition of reciprocity is set out in Words and Phrases, Volume 36, Permanent Edition, viz.: "'Reciprocity' denotes mutuality, or the relationship existing between states when each gives citizens of other certain favors or privileges

Appendix A

that its own citizens enjoy at hands of other state; and applicant for certificate of registration as professional engineer has no vested right to have board issue him certificate merely because he held certificate of registration granted him by proper authorities in another jurisdiction." Also see Spindel v. Jamison (Va. 1958), 103 S.E. 2d 205, 208. Thus, it is apparent that the reciprocal certificates as outlined in the quoted statute are "privileges", as distinguished from "rights", which privileges have been authorized by the grace of the sovereign state of Florida. It necessarily follows that the grant of such privileges by the sovereign does not create a constitutional right in the applicants to practice their profession of accountancy in the state of Florida under Chapter 473, Florida Statutes.

We must go to the question of whether the denial of the Petitioners' applications for reciprocal certificates on the ground of nonresidency is contrary to fact and law. Petitioners take the position that Mercer v. Hemmings,[1] as a matter of law, struck "residence" as a prerequisite for qualifying under the statutory reciprocity provision and concluded that the Board cannot consider such condition in weighing "similar privileges" as set out in the statute authorizing the granting of reciprocal certificates. Such a contention cannot be sustained. In short, the Board has construed the reciprocal statute to mean that it authorizes the granting of a certificate to an applicant who was originally certified in another state if that state would do likewise for a Florida certificate who is in a similar situation. If such criteria is not met, the Board is well within its discretionary power to [illegible] reciprocity, and we find in this record competent substantial evidence to sustain the finding of the Board.

[illegible] 180 So. 2d 78 (Fla. 1964).

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Appellees argue in their brief that the Supreme Court expressly held in Mercer v. Hemmings that petitioners should have a "... reasonable opportunity to qualify, under either the reciprocity or examination provisions of the statute without regard to residence or clerkships thereof ..., for registration in this State as certified public accountants." In all candor, the Mercer opinion seems to point to such a construction; however, such construction would compel us to hold that the Supreme Court struck down Subsection 473.19(3), Florida Statutes, pertaining to "similar privileges" for Florida residents. For example, if we should hold, as petitioners insist, that a Missouri accountant shall be admitted under the reciprocal privileges of the statute without regard to residence, we would place such applicant in a superior position to that of a resident of this State.[3] The practical result of such a holding would require the Board to authorize a Missouri accountant to practice in Florida without ever moving to this state or working in this state, while Florida accountants would be compelled to move to Missouri, or practice there, or join a Missouri accounting firm before being eligible for certification in that state.[4]

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[3]Other states from which the applicants were originally certified are New York, California, Massachusetts, New Jersey, and Pennsylvania. Each of these states do provide for reciprocity. Residence or practice within the state are major factors in the granting of reciprocal certificates in each of the states in which the several applicants were originally certified.

[4]§ 326.060, Missouri Revised Statutes, 1969, provides: "Individuals who apply for certificates as certified public accountants shall, except as otherwise herein provided: (1) Be citizens of the United States; (2) Be [illegible] years of age; (3) Be [illegible] of this state by [illegible] public accountancy, or in the employment of [illegible] public accountant, or a public accountant practicing within this state, [illegible] years [illegible] Provided, That [illegible] dispense with the requirement of examination, and issue a certificate

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We decline to give such application to the decision in Mercer.

Certiorari denied.

CARROLL, DONALD K., and JOHNSON, JJ., CONCUR.

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NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING PETITION AND, IF FILED, DETERMINED.

IN THE

SUPREME COURT OF FLORIDA

JULY TERM, A. D. 1964

HUGH MILLER MERCER, et al., individually and as partners doing business under the firm name of Price Waterhouse & Co., and JIM WALTER CORPORATION, a Florida corporation, *Appellants*, *vs.* ARTHUR I. HEMMINGS, et al., as members of and constituting the Florida State Board of Accountancy, *Appellees*.	CASE No. 32,967

Opinion filed July 29, 1964

An Appeal from the Circuit Court for Alachua County, John A. H. Murphree, Judge.

Cromwell A. Anderson, Louis S. Bonsteel, and Smathers and Thompson, for Appellants.

Chester Bedell, for Appellees.

ROBERTS, J.

This case is before us on direct appeal from a final decree upholding the validity of Chapter 473, Florida Stat-

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utes, relating to the practice of public accounting in this state, and Rule 20-9.03 promulgated by the Florida State Board of Accountancy ("the Board" hereafter), as against the attack on constitutional grounds made thereon by the appellants. Jurisdiction of the appeal attaches under Section 4(2) of Article V of the Florida Constitution.

The decree was entered in a suit for declaratory relief brought by the appellants, as partners doing business under the firm name of Price Waterhouse & Co., and their client Jim Walter Corporation, a Florida corporation doing business in several other states. The partnership is composed of some 130 certified public accountants, each of whom is authorized to practice as a certified public accountant in one or more states of the United States. None of them, however, holds such a certificate in this state, nor do any of them reside in this state.

The firm, which is one of the oldest and largest in this country, has performed accounting work in Florida since 1906. Since 1931, however (the year in which our statute providing for the examination and licensing of "certified public accountants" was adopted, Ch. 15637, Laws of Florida, Acts of 1931) its accounting work here has been limited to the fulfilling of specific engagements entered into outside the state, under 90-day temporary certificates issued by the Board as authorized by Section 473.14, Fla. Stat. From a modest thirteen in 1948, the number of such temporary certificates issued annually to the firm had increased to 69 issued in 1960. In that year, an office (referred to by appellants as a "work space") was established in Miami, with a manager and several assistants—all licensed by other states as certified public accountants—who with their families took up residence in Florida and devoted full time to the firm's accounting business for Flor-

ida clients. In 1961, 88 specific engagements, requiring the same number of temporary certificates, were undertaken in this state; and in January of 1962 an additional "work space" was established in Tampa.

In establishing such "work spaces", the appellants carefully avoided giving the appearance of holding themselves out to the general public in this state as being licensed under Florida law to practice as Florida certified public accountants. Their firm name was not placed on their office door nor in the building directory, nor was it listed in the telephone directory. The resident employees were not listed in any directories as certified public accountants nor (except in one unauthorized instance) as employees of Price Waterhouse. The letterheads of the Tampa and Miami offices show only a post office box number, and the telephone was answered by repeating part of the telephone number. Despite their attempt at anonymity, however, their "specific engagements" in this state increased to 134 during 1962 (including some that were acquired through their local Miami attorneys), requiring two managers at each of the offices and additional assistants (ten in the Miami office alone, all of whom were out-of-state certified public accountants) who resided in the local area and worked full-time for the appellants in the area.

The situation apparently first became known to the Board in July of 1962 when one of the managers of the Miami office applied to the Board for a reciprocal certificate to practice as a certified public accountant in this state, as authorized by Section 473.19, Fla. Stat. One of the requirements for the issuance of such a reciprocal certificate is that the applicant "has been engaged in the practice of public accountancy in Florida as a full time employee of a certified

public accountant, as defined in this chapter, for a period of two years, and is a resident, having resided continuously in the state for a period of two years . . ." The applicant stated in this application that he had been so engaged for the requisite period, having been employed by the appellants, Price Waterhouse. The Board denied his application and immediately adopted Rule 20-9.03 as an "emergency" measure without notice to the appellants.

The portion of the rule objected to by appellants reads as follows:

> "(3) The Board shall ascertain that the engagement for which an application is made is a specific engagement for which a temporary certificate may be issued, and does not constitute, and is not in conjunction with other engagements for the purpose of establishing, a full time practice of public accounting in the State of Florida. *Temporary certificates will not be issued to firms or persons maintaining a full time staff in the State of Florida, and using facilities for full time practice of public accounting as distinguished from fulfilling specific engagements under temporary certificates.*" (Emphasis added.)

The statutory provision relating specifically to the issuance of temporary certificates to out-of-state certified public accountants, Section 473.14, provides that

> "The board may, in its discretion, adopt rules and regulations providing for the issuance of temporary certificates to persons for the purpose of enabling such persons to fulfill specific engagements or employments for which they entered into beyond the limits of the state. "No such temporary

certificate shall be valid for more than ninety days after its issuance, and no certificate shall cover more than one engagement, and no such certificate shall be issued to any firm or copartnership unless all of the members thereof hold certificates as certified public accountants issued under the laws of another state* * *."

The instant suit for declaratory and injunctive relief was then filed by the appellants. The Board answered and filed a counterclaim praying that the court enjoin the appellants from practicing as certified public accountants in this state except under certificates as may be issued by the Board.

Trial was had of the issues made, and extensive depositions and numerous exhibits in support thereof were introduced in evidence, upon the basis of which the Chancellor held, inter alia, that the provisions of Chapter 473 requiring out-of-state certified public accountants to obtain certificates from the Board as a condition precedent to practicing in this state, are within the police power of the State and are not susceptible to the attack on constitutional grounds made upon them by the appellants; that the residency requirements of Chapter 473 for permanent certificates by examination and reciprocity "do not discriminate in favor of residents and against non-residents and are not invalid upon the grounds or for any of the reasons asserted by the plaintiffs"; and that Rule 20-9.03, supra, "is in keeping with the intent of Chapter 473" and not invalid on the grounds or for any of the reasons advanced by the appellants. The relief prayed for by the appellants was denied and that counterclaimed for by the Board was granted. This direct appeal followed.

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On this appeal the appellants argue that Rule 20-9.03 is inconsistent with the mandate of this court in Florida Accountants Association v. Dandelake, Fla. 1957, 98 So. 2d 323; that it is repugnant to Section 473.14, supra; and that it is without basis in the Florida police power. Their attack on constitutional grounds—against the Rule and against Section 473.14 and Chapter 473, if the Rule is held to be in keeping therewith—is summarized in their brief as follows:

> "It arbitrarily interferes with appellants' freedom of contract and rights of property in the practice of their profession and, therefore, is in violation of the Due Process Clause. It imposes an unjustifiable burden on interstate commerce and discriminates in favor of Florida Certified Public Accountants and Public Accountants at the expense of the interstate commerce in which appellants and their clients are engaged and, therefore, is in violation of the Commerce Clause. Finally, it discriminates irrationally between Florida Certified Public Accountants and nonresident Certified Public Accountants and, therefore, is in violation of the Equal Protection Clause."

In support of the contention that they cannot, consistently with Dandelake, be required to have Florida licenses as certified public accountants in order to maintain offices, staffed by full-time employees, in which to perform their accounting services, appellants argue that Chapter 473 as construed by this court in Dandelake is essentially a "holding out" statute, the purpose of which is "to protect the members of the Florida public from misrepresentation as to licensing by the state agency in the field of accountancy."

They urge that they do not hold themselves out to the general public in Florida as a firm of *Florida* certified public accountants, and therefore should not be required to comply with our certification requirements, any more than the accountants doing routine accounting work, involved in Dandelake, were required to do so.

This ingenious argument overlooks the fact that the appellants are, in fact, performing work *as certified public accountants* in Florida through employees residing and working full-time in this state. The fact that they do not advertise themselves as such to the *general* public in this state does not mean that they are not offering their services as such to a selected clientele—and one which, as noted above, is sufficient to require a large staff of full-time resident employees and "work spaces" in two of the largest cities of this state. Nor, apparently, were they averse to accepting work acquired through Florida contacts, since the record shows that several new accounts were obtained through the firm's Miami attorneys.

We held in Dandelake that accountants doing routine accounting work who do not hold themselves out as certified public accountants, licensed or registered by the Board, could engage in their profession in this state. We also, in effect, affirmed the decision of this court in Heller v. Abess, 1938, 134 Fla. 610, 184 So. 122, that the business or profession of accountancy is charged with a public interest sufficient to justify legislation providing for the registration of accountants and prohibiting the practice of accountancy in this state as a *certified public accountant* without a certificate as such from the Board. We find nothing in Dandelake that is inconsistent with a requirement that a firm, such as Price Waterhouse, which engages in the activities shown

by this record to have been performed by it, should be subject to the same certification requirements in Florida as a Florida firm engaging in similar activities. Accordingly, the contention that Dandelake requires a different holding cannot be sustained.

Their contention that the Rule "is even repugnant to the very statute on which it is purportedly based", Section 473.14, is likewise without merit. Section 473.14 merely specifies the circumstances in which out-of-state certified public accountants may fulfill specific, and temporary, engagements, the contracts for which were entered into beyond the limits of the state. Clearly, there is nothing in this provision indicating an intention to accord to out-of-state certified public accountants the privilege of engaging on a year-round basis, through permanent offices staffed by full-time employees residing in this state, in the practice of accountancy, as certified public accountants, in this state. Accordingly, this contention cannot be sustained.

This brings us to the attack on constitutional grounds made against the Rule and the statute by the appellants. Their position is that, despite the fact that none of them holds a license to practice in Florida as a certified public accountant, "the plaintiff partners have had and now have the constitutional and legal right to continue to engage in the occupation and business of accountancy in the State of Florida and the constitutional and legal right to continue to render accounting services in this state to or for any and all corporations, firms and individuals by which or by whom they have been or shall be employed to render such services." (The quotation is from their complaint filed in this cause.) The constitutional basis for such contention was quoted above, and involves the due process, equal protection, and [illegible] clauses of the federal constitution.

The gist of their argument under the due process clause is that the Rule was obviously motivated not by valid police power considerations but by selfish private economic advantage, and for these reasons it "arbitrarily interferes with appellants' freedom of contract and abridges their rights of property, and cannot stand under the Due Process Clause." The short answer to this is that the regulation of the practice of public accounting in this state, in its requirement for certification of those who engage in the practice as certified public accountants, has been upheld as a proper exercise of the police power. Heller v. Abess, supra, 184 So. 122; Florida Accountants Association v. Dandelake, supra, 98 So. 2d 323. A great majority of the courts of other jurisdictions so hold. See the cases collected in the annotation in 70 A.L.R. 2d 433.

It is well settled that, if otherwise valid, the motives of the adopters of a statute or rule are not relevant. An interesting comment on this principle of law was made by the U. S. Supreme Court in Goesaert v. Cleary, 1948, 335 U. S. 464, in upholding a Michigan statute prohibiting women from serving as bartenders and exempting from the legislative prohibition the wives and daughters of tavern owners. The court said:

> "We cannot cross examine either actually or argumentively the mind of the Michigan legislators nor question their motives. Since the line they have drawn is not without a basis in reason, we cannot give ear to the suggestion that the real impulse behind this legislation was an unchivalrous desire of male bartenders to try to monopolize the calling."

In Heller v. Abess, supra, we noted that statutes regulating occupations and professions to conserve the public

welfare may be declared to be a deprivation of property and contract rights without due process of law "only when the regulation is arbitrary and unreasonable or oppressive as it adversely affects such life, liberty and property rights." Since, as noted, the provision of Chapter 473 in question was upheld by the court in that case, the appellants' contention under the due process clause cannot be sustained.

The main thrust of appellants' attack on the Rule and the statute is on commerce clause grounds, their contention being that the practice of accountancy, as engaged in by them, is in interstate commerce; that they have the constitutional and legal right to engage in the occupation and business of accountancy in this state in connection therewith; and that the prohibition against their activities in this state made by the Rule (and by the statute, if the Rule is in keeping therewith) directly burdens and discriminates against interstate commerce, contrary to Section 8, Article I, of the United States Constitution.

Insofar as the Rule and the statute have the effect of making it necessary for the appellants to obtain Florida certification as a pre-requisite to continuing their full-time practice of accountancy in this state, the attack on commerce clause grounds cannot be sustained. It is now well settled that a state may require a license and a reasonable fee from out-of-state concerns doing business within its borders, as well as [illegible] with provisions designed to assure [illegible] in dealing with its citizens, even though such [illegible] engaged in interstate commerce. See Meyers [illegible] 71 S. W. 2d 368, 54 A. L. R. 2d 868; [illegible] 313 U. S. 100. Cf. McInerney v. [illegible] 343 U. S. 32, 72 S. Ct. 526, 96 L. Ed. 2d 468, 481. As stated in Robert[illegible] (1946), 328 U. S. 440, 458:

"But we are far beyond the time when, if ever, the word 'license' per se was a condemnation of state regulation of interstate business done within the state's borders. * * * For the commerce clause is not a guarantee of the right to import into a state whatever one may bring, regardless of the effects upon the local community. That is true whether what is brought in consists of diseased cattle or fraudulent or unsound insurance."

And it is settled in this state, as well as in other jurisdictions, that a state has a legitimate interest in regulating a highly skilled and technical profession such as public accountancy. This being so, the standards of proficiency which must be met in order to be registered and to practice in this state as a certified public accountant should, logically, be met by out-of-state persons or firms as well as by local persons and firms. To sustain the appellants' contention that out-of-state certified public accountants should be given *laissez faire* to perform unlimited engagements as certified public accountants in this state without regard to our standards of proficiency, and completely independent of the Board and its licensing requirements, would not only be grossly unfair to our resident public accountants who are required to comply therewith, but would inevitably result in a lowering of such standards. This was the view of the U. S. Supreme Court in a somewhat analogous situation, involving a statute regulating the insurance business. In Robertson v. California, supra, in holding that such statute was applicable to out-of-state insurance companies doing business in California, the court said, 328 U. S. at page 446:

"In short, the result would be ultimately to force all of the states to accept the lowest standards for com-

ducting the business permitted by one of them or, perhaps, by foreign countries. Inevitably, this would mean that Congress would be forced to intervene and displace the states in regulating the business of insurance. Neither the commerce clause nor the Southeastern decision dictates such a result."

The contention of the appellants, on equal protection grounds, is so obviously without merit as to warrant no discussion.

It must be held, therefore, that the decree here reviewed correctly held that the provisions of Chapter 473 requiring out-of-state certified public accountants to obtain certificates from the Board as a condition precedent to practicing in this state, are immune to the attacks made upon them by the appellants.

But it is one thing to say that out-of-state certified public accountants must comply with the certification requirements to practice as certified public accountants in this state; it is another to hedge the application for such certificates with such residence and clerkship requirements as to make it impossible for an out-of-state certified public accountant to comply therewith.

The purpose of our statute, Ch. 473, is to make sure that only those persons who meet the high standards of proficiency established by the statute and the Board may practice as certified public accountants in this state. If the examination and the standards of the state in which an out-of-state certified public accountant was originally certified are the equivalent of those of this state, there would appear to be no valid reason for requiring, as a pre-requisite to the issuance of a reciprocal certificate, that the applicant therefor meet the residence and clerkship requirements of Section

473.19(2), Fla. Stat. Nor does it appear to be reasonably necessary, to accomplish the purpose of the Act, to require out-of-state certified public accountants who cannot comply with the reciprocity provisons of the Act and who desire to qualify, by examination, to practice in this state as certified public accountants, to meet the residence and clerkship requirements of the Act, Section 473.08.

We hold, therefore, that the contention of the appellants with respect to the impact of the Rule upon the Act, as a whole, in making it virtually impossible for them to practice as certified public accountants in this state, is well taken; that the Rule cannot constitutionally be applied to appellants, under the requirements of the Act as presently written; and that the appellants should be allowed to continue to engage in the practice of accountancy under temporary certificates to fulfill specific engagements until such time as they have a reasonable opportunity to qualify, under either the reciprocity or examination provisions of the statute—without regard to residence or clerkship requirements thereof—for registration in this state as certified public accountants.

The decree reviewed is affirmed in part and reversed in part and the cause remanded for the entry of a decree in accordance with the opinions herein expressed.

It is so ordered.

DREW, C. J., THOMAS, THORNAL, O'CONNELL, ERVIN and HOBSON (Ret.), JJ., concur

Appendix A

FINAL DECREE

This cause came on for trial before the Court upon the issues made by the plaintiffs' complaint, the defendants' answer, defendants' counterclaim against the plaintiff partners and their reply to the counterclaim. By agreement of counsel, numerous and extensive depositions were introduced, subject to objections made by counsel for defendants during the taking of the depositions. Numerous exhibits attached to the several depositions were likewise introduced in evidence, subject to such objections as should be stated in writing by defendants. Written objections were later filed, which were considered by the Court, along with plaintiffs' response to those written objections. All such objections are overruled and all of the deposition testimony and exhibits have been considered and given such effect as in law they are entitled to.

Following introduction of evidence at the trial, the Court heard oral arguments of counsel for the respective parties. Thereafter, counsel submitted briefs that have been carefully considered by the Court.

Upon the pleadings and evidence, the Court finds, declares and decrees as follows:

1. Each of the plaintiff partners is a certified public accountant certified by one or more states other than the State of Florida. No one of the plaintiffs is certified by the State of Florida. Each of the plaintiffs is a non-resident of the State of Florida.

2. For some years before the filing of the complaint, the plaintiff partners engaged in performing services in Florida as "public accountants" under temporary certificates issued

by the Florida State Board of Accountancy upon applications filed by plaintiff partners pursuant to the provisions of F. S. 473.14. The number of such temporary certificates increased from 3 in 1955 to 134 in 1962.

3. By 1960 the amount of accounting work being carried on by plaintiff partners had increased to such an extent that they opened an office in Miami, staffed by permanent employees residing in Florida. In 1962 another such office was opened in Tampa. Each of these offices at the time of trial was staffed by two "managers" who were certified public accountants (certified by states other than Florida), several other accountants and secretaries, all of whom were and are permanent residents of either Miami or Tampa.

4. The accounting services that have been rendered by the plaintiff partners in Florida under such temporary certificates, and that are being rendered by plaintiff partners in Florida and in which plaintiff partners' Florida employees are engaged and in which plaintiff partners' Florida offices are used, were not and are not ordinary or routine accounting services such as are or may lawfully be performed by bookkeepers but were and are services that only certified public accountants or public accountants are qualified and eligible to perform, consisting of the examination and auditing of books, statements and other records prepared and kept by others, and the preparation of reports of such examinations and audits, including certificates and expressions of opinions as to the correctness and fairness of the matters certified, and consisting in large part of the preparation and certification of reports and statements to be filed with public agencies of the Federal Government, the State of Florida

and other governmental agencies requiring certification of such statements by independent public accountants as well as the preparation and certification of financial statements to be presented to banks and other lending institutions in connection with applications for loans or extensions of credit. The work performed by these Florida employees was and is performed under the supervision of one or more of the plaintiff partners.

5. When members of the Florida State Board of Accountancy learned of the existence of the plaintiff partners' Florida offices and the extent and manner of carrying on plaintiff partners' accounting business in Florida under the temporary certificates, the Board gave consideration to revising its rules governing temporary certificates and its other rules, and thereafter duly adopted Rule 20-9.03. This rule requires every applicant for temporary certificates to state in a sworn application, and requires that the Board shall ascertain as a condition to granting such application, that the applicant is not maintaining a full-time office and staff in Florida for full-time public accounting practice in Florida, as distinguished from fullfilling specific engagements under temporary certificates.

6. Since adoption of Rule 20-9.03, plaintiff partners have not applied for temporary certificates under F.S. 473.14 and Rule 20-9.03, nor have any of the plaintiff partners applied for a reciprocal certificate from the Florida State Board of Accountancy under the provisions of F. S. 473.19 and Rule 20-9.04, or sought to obtain from the Board a certificate under the provisions of F. S. 473.08.

7. Plaintiff partners contend that by the nature of their operation they are not holding themselves out to the public and assuming to practice as certified public accountants and as public accountants in the State of Florida within the meaning of chapter 473, Florida Statutes, without holding certificates of authority from the Florida State Board of Accountancy. Even if it could be conceded that technically plaintiff partners are not holding themselves out to the public as certified public accountants and as public accountants, and of this the Court has misgiving, certainly it is manifest that they have assumed to practice as such and by so doing are clearly violating the provisions of said chapter.

8. The plaintiff partners are not entitled to practice as certified public accountants in Florida under their certifications in other states without first obtaining appropriate certificates from the Florida State Board of Accountancy.

9. The provisions of chapter 473 requiring that certified public accountants registered in other states obtain certificates from the Florida State Board of Accountancy as a condition to practicing in this state are within the police power of the State of Florida and valid. They are not invalid for any of the reasons or upon any of the grounds asserted by plaintiffs.

10. The residency requirements of chapter 473 for permanent certificates by examination and reciprocity do not discriminate in favor of residents and against non-residents and are not invalid upon the grounds or for any of the reasons asserted by the plaintiffs. Moreover, plaintiffs have not shown themselves to be in position to rely on their asserted invalidity of those provisions.

11. Rule 20-9.03 governing the issuance of temporary certificates is in keeping with the intent of chapter 473 and is in keeping with the intent of chapter 473 and is a valid exercise of the powers committed by that chapter to the Florida State Board of Accountancy and is not invalid on the grounds or for any of the reasons asserted by plaintiffs. Moreover, plaintiffs have not shown themselves to be entitled to rely on their asserted invalidity of that rule.

12. The plaintiff Jim Walter Corporation is not entitled to any relief. Accordingly it is ORDERED, ADJUDGED AND DECREED that as to the plaintiff Jim Walter Corporation the complaint is dismissed.

13. Plaintiff partners are not entitled to the injunctive relief prayed in the complaint or to any relief other than the determinations and declarations by the Court upon the questions presented. The declaratory relief to which plaintiff partners are entitled has been granted by the findings and declarations hereinabove set forth.

14. Defendants are entitled to the relief prayed in their counterclaim and to the injunctive relief hereinafter granted.

15. The plaintiff partners, individually and as partners doing business under the firm name of Price Waterhouse & Co., and their agents and employees, be and they are hereby enjoined and restrained from holding themselves out, or assuming to act as certified public accountants or as public accountants, in the State of Florida, and from practicing as certified public accountants, or as public accountants, and from rendering accounting services in the State of Florida

of the kind and nature that have heretofore been rendered by the plaintiff partners, their agents and employees, under temporary certificates issued by the Florida State Board of Accountancy, except under such certificates as may hereafter be lawfully issued by the Florida State Board of Accountancy.

16. The defendants, as members of and constituting the Florida State Board of Accountancy, and their several and respective successors constituting that Board, shall have and recover of and from the above named plaintiff partners and the plaintiff Jim Walter Corporation the defendants' costs to be taxed by the Court on notice, unless the parties are able to agree and stipulate as to the amount of taxable costs.

DONE AND ORDERED at Gainesville, Alachua County, Florida, this 2nd day of August, 1963.

/s/ JOHN A. H. MURPHREE
JUDGE

Appendix A

IN THE

CIRCUIT COURT OF FLORIDA

EIGHTH JUDICIAL CIRCUIT

IN AND FOR ALACHUA COUNTY

No. 11133-C

HUGH MILLER MERCER, *et al.*,

Plaintiffs,

v.

ARTHUR I. HEMMINGS, *et al.*,

Defendants.

SUPPLEMENTAL DECREE PURSUANT TO MANDATE

This cause came on to be heard upon plaintiffs' motion for entry of a final decree in accordance with the Opinion and Mandate of the Supreme Court of Florida, after notice to counsel for the defendants. Upon consideration of the Opinion and Mandate and the arguments submitted on behalf of the respective parties, it is now ORDERED, ADJUDGED AND DECREED by the Court that the Final Decree entered herein on August 2, 1963, be and the same is hereby amended to conform to the Opinion and Mandate of the Supreme Court of Florida as follows:

1. The last sentence of Paragraph 9 of the Final Decree is hereby stricken.

2. Paragraphs 10, 11 and 16 of the Final Decree are hereby stricken.

3. Plaintiffs may qualify as certified public accountants in Florida by reciprocity under F. S. 473.19, or by examination under F. S. 473.08, and applicable rules of the Florida State Board of Accountancy, without regard to the residency or clerkship requirements contained in F. S. 473.

If appellants do not choose to so qualify, by reciprocity or examination, they must be governed by the provisions of F. S. 473.14 and rule 20-9.03 pertaining to temporary certificates, like all others.

4. The effect of the injunction contained in the Final Decree is hereby stayed until the further order of this Court, after due notice, to allow the plaintiffs to continue to practice in Florida as certified public accountants under temporary certificates to fulfill specific engagements until such time as they have a reasonable opportunity to qualify, under either the reciprocity or examination provisions of the statute—without regard to the residence or clerkship requirements thereof—for registration in this State as certified public accountants.

5. It having been made known to the Court that during the progress of the action Jewell A. Davis, one of the original defendants, has been succeeded by Charles W. Johnson, Jr., and Robert M. Morgan, another of the original defendants, has been succeeded by Benjamin E. James, the said Charles W. Johnson, Jr., and Benjamin E. James be and they are hereby substituted as defendants in the place and stead of Jewell A. Davis and Robert M. Morgan as members of the State Board of Accountancy of the State of Florida.

6. It having been made known to the Court that during the progress of the action certain of the plaintiff partners have retired and certain new partners have been admitted to the partnership, John Bernard Farrell, Richard David Fitzgerald, Howard Lynn Guyett, Casimir Paul Jannis, Percy Walter Pogson, Donald Rappaport, William Henry Shine, Harold Hawthorne Shreckengast, Jr., Frank Everett Small, Bruce Furman Smith, Jack Wayne Wyker, William Young, Robert William Ash, James Agnew Dowsley, Clyde Henry Folley, Robert H. Graves, Paul August Henschen, Edward Joseph Lynott, Jr., Donald Lester McIntosh, Harry Leland Morris, Leon Marion Nad, John Richard Purdy, and Donald Henry Trautlein be and they are hereby substituted as plaintiffs in the place and stead of Robert Milton Griffiths, David Francis Houlihan, Donald Richard Jennings, Alden Conmoran Smith, Richard Sprague Chamberlain, James Woodrow Mathews, Orville Kenneth Pryor, Charles Addison Stewart, and Philo Ralph Zimmerman, as partners doing business under the firm name of Price Waterhouse & Co.

7. In all other respects the Final Decree entered August 2, 1963, shall remain in full force and effect.

8. The parties having agreed to settle the matter of costs between themselves no order is required.

Done and Ordered this 31st day of March, 1965.

/s/ John A. H. Murphree
Judge

Appendix B

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES

UNITED STATES CONSTITUTION

Article I, Section 8:

The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

Amendment XIV, Section 1:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

CHAPTER 473, FLORIDA STATUTES

§ 473.03

The governor shall appoint five persons, each of whom shall be a resident of the state and shall hold a certificate as a certified public accountant issued by the state board of accountancy of this state, and such persons and their successors in office shall constitute the state board of accountancy and shall have and exercise all of the powers and authority vested by law in said board.

All appointments of members shall be for terms of four years from the termination of the then existing terms. All persons appointed to membership upon said board shall hold office after the expiration of

their respective terms, until their successors are appointed and qualified. All vacancies upon the board shall be filled by appointment by the governor for the unexpired term. No person shall ever be appointed to membership upon such board unless he shall at the time of such appointment be the holder of a certificate as a certified public accountant issued by the board.

§ 473.08

(1) Any person who is a citizen of the United States and a resident of the state, over the age of twenty-one years, of good moral character, and a graduate of a high school with a four years' course of study, or who has had an equivalent education, and who shall otherwise meet the qualifications specified in the rules of the board, shall be entitled to take an examination for the purpose of determining whether or not such person shall be permitted to practice in this State as a certified public accountant, provided such person

(a) is a graduate of at least a four-year accredited college or university course with a major in accounting, or

(b) has not less than three years' experience in the practice of public accounting, or

(c) has been engaged in the occupation of keeping books of account concurrently for more than one individual or business in the state as his sole vocation for a continuous period of at least five years immediately preceding the date of his application to take such examination, and proof of compliance with this provision shall be established in such form as is prescribed by the rules of the state board of accountancy.

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(2) A person who qualifies to take said examination pursuant to provisions of paragraph (a) of sub-section (1) of this section, and who takes and passes said examination, shall not receive a certificate as a certified public accountant and shall not be permitted to practice public accounting in this State until he shall have completed one year of work in a registered accountant's office, or until he shall have successfully completed an additional accredited one year accounting course at an accredited college or university, and proof of compliance with the provisions of this paragraph shall be established in such form as is prescribed by the state board of accountancy.

(3) For the purpose of this section, a resident of Florida is defined as one who has resided in this state for at least two years immediately preceding the filing of his application, and who is legally domiciled in the state.

(4) The provisions of paragraphs (b) and (c) of subsection (1) of this section shall be effective for a period of five years following the date of enactment of this amendment, after which period no person other than a graduate of at least a four-year accredited college or university course with a major in acounting shall be considered as having fulfilled the educational requirements necessary to qualify for an examination for th purposes of determining whether such person shall be permitted to practice as a certified public accountant, except that any person whose application for an examination shall have been approved by the state board of accountancy prior to the termination of said five year period shall be entitled to take such examination at any time or times during the period of five years immediately follow-

ing the termination of the five year period first referred to in this paragraph.

(5) The state board of accountancy shall have the authority to establish the standards for determining and shall determine:

(a) what constitutes an education equivalent to that of a graduate of a high school with a four-year course of training;

(b) what educational institutions offer a four-year accredited college or university course, and

(c) what course taken at such schools constitute a major in accounting, within the contemplation of this section.

§ 473.14

The board may, in its discretion, adopt rules and regulations providing for the issuance of temporary certificates to persons for the purpose of enabling such persons to fulfill specific engagements or employments, the contracts for which were entered into beyond the limits of the state.

No such temporary certificate shall be valid for more than ninety days after its issuance, and no certificate shall cover more than one engagement, and no such certificate shall be issued to any firm or copartnership unless all of the members thereof hold certificates as certified public accountants issued under the laws of another state or certificates as chartered accountants issued under the laws of a foreign country; and no such temporary certificate shall be issued to an individual unless he holds a certificate as a certified public accountant issued under

the laws of another state or country, or a certificate as a chartered accountant issued under the laws of a foreign country. Each person applying for a temporary certificate shall pay to the board the sum of ten dollars, which shall be disposed of as other moneys are required to be disposed of under this chapter.

§ 473.16

It is unlawful for any person holding a certificate as a certified public accountant or a certificate of authority as a public accountant to act as the representative, agent or manager, in the state, in connection with the practice of public accounting, of any person not authorized under the provisions of this chapter to practice public accounting in this state, or of any firm or association of persons, unless each member of such firm or association or persons shall be authorized to practice public accounting in this state under the provisions of this chapter; provided, that any certified public accountant or firm of certified public accountants residing beyond the limits of the state, who was or were represented on June 25, 1931, in the state by a representative, agent or manager, shall be permitted to continue to be represented in this state by such representative, agent or manager, but no new or successor representative, agent or manager in the state shall be appointed, employed or selected for such certified public accountant or firm of certified public accountants without the approval in writing of the board first being had and obtained.

§ 473.19

The board may, in its discretion, issue a certificate as a certified public accountant to any applicant who

holds a valid and unrevoked certificate as a certified public accountant issued by, or under the authority of, another state or political subdivision of the United States, or who holds a valid and unrevoked certificate as a chartered accountant issued by, or under the authority of, a foreign country; provided, the applicant has complied with the provisions of this chapter and the rules of the board. The board shall not be required to issue any certificate under the provisions of this section unless: (1) The original certificate was secured as the result of an examination which in the judgment of the board was the equivalent of the standard established by it, and, (2) The applicant has been engaged in the practice of public accountancy in Florida as a full time employee of a certified public accountant, as defined in this chapter, for a period of two years, and is a resident, having resided continuously in the state for a period of two years, and (3) The state or country issuing the original certificate grants similar privileges to persons holding certificates as certified public accountants issued under the laws of this state, and, (4) The board is otherwise fully satisfied as to the moral and technical fitness of the applicant.

§ 473.23

Any person:

(1) Who shall use any other term than certified public accountant or the abbreviation C. P. A. to indicate that he is a public accountant with a specially granted title; or

(2) Who shall announce by printed or written statement that he holds any membership in any society, as-

sociation or organization of professional public accountants, unless such society, association or organization has been officially recognized by the board; or

(3) Who shall, when practicing as a member of a firm, announce either in writing or by printing, or represent verbally, that the firm is practicing as "Certified Public Accountants", unless all members of the firm are holders of valid and unrevoked certificates as certified public accountants issued by the state board of accountancy of this state; provided, that any person holding a certificate in good standing as a certified public accountant or as a public accountant granted by the state board of accountancy of this state, when acting as a representative, partner or manager of an individual or firm, properly qualified to practice public accounting under the laws of a state, or states, other than Florida, may hold out to the public that such individual is or that such individals are, so qualified; or

(4) Who shall attempt to practice public accounting under an assumed name, or in the name of a corporation; or

(5) Who shall, as a member of a firm, announce either in writing or by printing, or represent verbally, that the firm is practicing as "Public Accountants", unless all members of the firm are holders of certificates of authority to practice as public accountants or certificates as certified public accountants within the meaning of this chapter; provided, that any person holding a certificate in good standing as a certified public accountant or as a public accountant granted by the state board of accountancy of this state, when acting as a representative,

partner or manager of an individual or firm, properly qualified to practice public accounting under the laws of a state or states, other than Florida, may hold out to the public that such individual is, or that such individuals are so qualified; or

(6) Who shall, as an officer of a corporation, permit it to practice public accounting; or

(7) Who holds himself out to the public as a certified public accountant, or who assumes to practice as a certified public accountant, unless he has received and holds a certificate as such from the board; or

(8) Who holds himself out to the public as a public accountant or who assumes to pracitce as a public accountant unless he has received and holds a certificate of authority from the board; or

(9) Who shall practice, or hold himself out as qualified to practice, as a certified public accountant or as a public accountant after his certificate has been revoked, or during the time that his certificate is suspended; or

(10) Who shall practice as an individual or as a member of a firm, or who shall permit a firm of which he is a member to practice, as a certified public accountant or as public accountant, unless a registration card has been duly secured for the current year in accordance with the provisions of this chapter; or

(11) Who shall sell, buy, give, or obtain an alleged certificate as a certified public accountant or certificate of authority or a registration card in any other manner than as provided for by this chapter; or

(12) Who shall attempt to practice as a certified public accountant or as a public accountant under guise

of a certificate not issued by the board, or under cover of a certificate obtained illegally or fraudulently; or

(13) Who shall knowingly certify to any false or fraudulent report, certificate, exhibit, schedule or statement; or

(14) Who shall attempt by any subterfuge to evade the provisions of this chapter while practicing public accounting; or

(15) Who shall, as an individual or as a member of a firm or as an officer of a corporation, permit to be announced by printed or written statement, or shall represent verbally, that any report, certificate, exhibit, schedule or statement has been prepared by a certified public accountant or by a public accountant when the person who prepared the same was not such certified public accountant or public accountant, except when such person is the employee of a certified public accountant or public accountant, or a firm of certified public accounts or public accountants;

Shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five hundred dollars for each offense or imprisonment in the county jail for a period not exceeding six months.

RULES OF THE FLORIDA STATE BOARD OF ACCOUNTANCY

Rule 20-1.02—Major in Accounting—Course Requirements.

For purposes of Section 473.08(5)(c), the following courses are required for an accounting major within the contemplation of the law:

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Required Accounting Courses

Course Description	No. of Semester Hours	
Elementary Accounting		
Intermediate and Advanced Accounting ..	15	(1)
Cost Accounting, Auditing, Governmental Accounting and Federal Taxation Accounting	12	(2)
Total	27	

Required Related Courses

English (Composition, Literature, Business English, etc.)	9
Economic Theory and Principles	6
Business Law (Contracts, Partnership, Sales, Agency, Bailments, Negotiable In-	

Notes:

(1) An applicant must offer a total of fifteen semester hours in elementary, intermediate and advanced accounting; however, not more than six semester hours shall be acceptable in elementary accounting; moreover, if less than six semester hours are offered by an applicant in elementary accounting, the difference between the total number of semester hours offered by an applicant in elementary accounting and fifteen semester hours must be offered in intermediate and advanced accounting—no specialized accounting courses shall be acceptable as a substitute for any part of the fifteen semester hours required. For example: An applicant may conceivably not possess any college credit in elementary accounting. He may satisfy the fifteen semester hours requirement by offering the necessary courses in intermediate and advanced accounting for a total of fifteen semester hours.

(2) A total of twelve semester hours must be offered for the courses listed. Any applicant who possesses sufficient credits in each of the courses listed to satisfy the minimum requirements for the four courses, but who does not possess the minimum requirements in auditing, two courses in cost and federal taxation accounting, may substitute hours

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Course Description	No. of Semester Hours	
struments, Corporations, Insurance, etc.)	6	
Business and/or Public Finance	6	(3)
(The hours required under this provision are six hours in any of the following subjects: Corporation Finance, Investments, Money and Banking, Taxation, Governmental Finance or Business Finance.)		
TOTAL	27	
TOTAL SEMESTER HOURS REQUIRED	54	(4)

Rule 20-9.03—Temporary Certificates

(1) Applications for certificates to fulfill specific engagements or employments, the contracts for which were entered into beyond the limits of the State of Florida, will be received by the Board, from persons or firms who do not hold certificates from the Board, but who do hold valid certificates as Certified Public Accountants issued under the laws of another State, or certificates as chartered accountants issued under the laws of a foreign country.

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(3) The six semester hours required under this provision may be complied with by offering a total of six semester hours in any of the subjects named, but no subject or course shall be acceptable that is for less than two semester hours credit.

(4) Applicants for the Certified Public Accounting Examination are forewarned that the course requirements as outlined above for the purpose of constituting a major in accounting as prescribed by the Board are considered as the minimum requirements as a prerequisite for the examination and course substitutions will not be permitted.

(2) Applications for certificates to fulfill specific engagements or employments shall be in writing directed to the Secretary of the Board on forms prescribed by the Board.

(3) The Board shall ascertain that the engagement for which an application is made is a specific engagement for which a temporary certificate may be issued, and does not constitute, and is not in conjunction with other engagements for the purpose of establishing, a full time practice of public accounting in the State of Florida. Temporary certificates will not be issued to firms or persons maintaining a full time staff in the State of Florida, and using facilities for full time practice of public accounting as distinguished from fulfilling specific engagements under temporary certificates.

(4) Each application shall be accompanied by the sworn statement of the applicant, or if it is a firm, by a partner of the applicant, to the effect that said work qualifies [sic] for a temporary certificate and that the contract was made outside of the State, and that the said applicant is not maintaining a full time office and staff in the State of Florida for full time public accounting practice in the State of Florida as distinguished from fulfilling specific engagements under temporary certificates.

(5) The Board may on its own initiative or upon the request of any applicant conduct a hearing taking sworn testimony of the applicant, or a partner or employee thereof, prior to granting or refusing a temporary certificate.

(6) Temporary certificates shall be signed by the Chairman and Secretary of the Board. Each year, a list

of all temporary certificates issued shall be entered in the minutes of the Board.

Rule 20-9.04—Reciprocal Certificates

(1) The Board may, in its discretion, issue a certificate as a Certified Public Accountant to any applicant who holds a valid and unrevoked certificate as a Certified Public Accountant issued by, or under the authority of, another state of political subdivision of the United States, or who holds a valid and unrevoked certificate as a chartered accountant issued by, or under the authority of, a foreign country, provided the applicant shall have met all of the requirements enumerated in 473.19, F. S. and shall have demonstrated to the satisfaction of the Board that at the time his original certificate was issued he could have met the educational requirements then in effect in the State of Florida for the issuance of a certificate as a Certified Public Accountant.

(2) Notwithstanding the applicant's inability to meet the residence and experience requirements enumerated in 473.19, F.S. the Board may, in its discretion, issue a certificate by reciprocity to an applicant holding a valid and unrevoked certificate as a Certified Public Accountant issued by, or under the authority of, another state or political subdivision of the United States and who meets the requirements enumerated in 473.19(1), (3) and (4), F.S. provided:

(a) Applicant shows (1) that the examination and standards of the state or political subdivision in which his certificate was originally issued, including educational and experience requirements, were, at the time his certificate was originally issued, the equivalent of those of the State of Florida in effect on the date of the

application for certificate by reciprocity, and (2) that, on the date of the application for certificate by reciprocity, the applicant is a citizen of the United States and a bona fide resident of the State of Florida, or

(b) Applicant shows (1) that the examination of the state or political subdivision in which his certificate was originally issued was the equivalent of the examination of the State of Florida on the date of issuance of applicant's original certificate, (2) that applicant meets the educational requirements of the State of Florida for certification by examination in effect on the date of the application for certificate by reciprocity, (3) that applicant has been engaged in the practice of public accounting in the United States for a period of two years as a full-time employee of a Certified Public Accountant or under the applicant's own certificate issued by such other state or political subdivision, and (4) that, on the date of the application for certificate by reciprocity, the applicant is a citizen of the United States and a bona fide resident of the State of Florida.

(3) Applications for reciprocal certificates to be issued under Section 473.19, F.S. and the provisions hereof, shall be submitted on application forms to be furnished by the Board, and must be accompanied by a fee of $150 to cover costs of processing, investigation, etc. (Amended April 2, 1965, effective May 20, 1965, and still in effect at the time of the decisions below.)

Rule 20-10.01—Unlawful to Act as Representative or Agent

Subject to the proviso expressed in Florida Statutes, Section 473.16, it is unlawful for any person holding a certificate as a certified public accountant or as a

public accountant to act as representative, agent or manager, in this State, in connection with the practice of public accounting, of any person not authorized under the provisions of Chapter 473, Florida Statutes, to practice public accounting in this State, or of any firm or association of persons, unless each member of such firm or association of persons shall be authorized to practice public accounting in this State under the provisions of Chapter 473.

Rule 20-10.02—Must Maintain Own Identity and Independence

Persons holding certificates as certified public accountants or as public accountants under the provisions of Chapter 473, Florida Statutes, may act as correspondents in the performance of public accounting services in this State for clients of non-resident certified public accountants or public accountants who are not holders of certificates authorizing them to practice public accounting in this State, provided that in every such instance where the person or persons holding a certificate or certificates issued by this Board who shall act or assume to act as such a correspondent, such person or persons shall maintain his or their own identity and independence and no person assuming or undertaking to act as such a correspondent shall expressly or impliedly agree or assume, under the guise of a correspondent relationship, to act as a representative, agent or manager or partner or joint-venturer in the practice of public accounting in this State, of any person who is not or any persons who are not authorized under the provisions of Chapter 473, Florida Statutes, to practice public accounting in this State.

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Rule 20-10.03—Criteria for Determining Legality of Relationship

Whether a person is an agent or an independent contractor for another depends on the facts and circumstances relating to the formation of the relationship and the carrying on of the work, rather than the denomination attributed to the relationship by the parties. If the facts and circumstances indicate that the purpose of the relationship was or is to enable persons not holders of Florida certificates to carry on a full-time practice of public accounting in this State through a Florida correspondent, the relationship will be regarded as a subterfuge condemned by Section 473.23 (14), Florida Statutes, and unlawful. If by the terms of an express agreement a party to a correspondent relationship not holding a Florida certificate is entitled to exercise control over the policies or operations of the Florida correspondent or if in the carrying on of the work the party not holding a Florida certificate does in fact exercise control over the policies and operations of the Florida correspondent, the Florida correspondent will be regarded as an agent rather than as an independent contractor. In determining whether the purpose of the relationship is unlawful and whether the relationship is one of agency or of independent contractor, consideration will be given to the following:

(1) The financial interest, if any, of one correspondent, or some member thereof, in the business or assets of the other.

(2) The financial obligation, if any, by one correspondent, or by one or more members thereof, to the other correspondent, or some one or more members thereof.

(3) The arrangement for compensation for work undertaken by one correspondent for the other or for the other's clients, e.g., whether on a time basis, flat fee basis, percentage basis or otherwise; whether profits or losses are to be shared, etc.

(4) The existence or non-existence of an obligation by either party to forward business to the other.

(5) The frequency of forwarding business by one party to the other and the volume and extent of the business forwarded as bearing upon the possible dependency of one party upon the other.

(6) The existence or non-existence of a partnership relationship between the Florida correspondent or one or more members thereof, and the non-resident correspondent, or one or more members thereof.

(7) All other facts and circumstances bearing upon the purpose of the relationship or the degree of control that either party may exercise or be entitled to exercise over the policies or operations of the other.

Rule 20-10.04—Notification of Board

Every person holding a certificate as a certified public accountant or as a public accountant under the provisions of Chapter 473, Florida Statutes, who is presently a party to or who shall hereafter enter into a permanent or continuing correspondent relationship with any non-resident certified public accountant or public accountant who does not hold a certificate authorizing him to practice public accounting in this State, shall promptly notify the Board of such relationship and furnish the Board with a copy of the documents evidencing such relationship, and in cases where such rela-

tionship is not evidenced by writing, shall furnish the Board with a written statement summarizing the details of the relationship. Every such person shall also furnish to the Board a statement of the facts relating to the factors referred to in Section 20-10.03(1) through (7) and such additional information as may be requested by the Board. Every such person shall promptly notify the Board of any modification in the relationship with respect to which previous notice has been given, at the same time furnishing the Board with a copy of the documents evidencing such modification and in cases wherein the modification is not evidenced by writing, shall furnish the Board with a written statement summarizing the details of the modification.

Appendix C

IN THE

SUPREME COURT OF FLORIDA

HERMAN W. BEVIS, et al., individually and as partners doing business under the firm name of Price Waterhouse & Co., Petitioners, —*against*— MARK W. EASTLAND, et al. Respondents.	Case No. 35,360

PETITION FOR REHEARING AND OTHER RELIEF

Price Waterhouse & Co., as such and by its individual partners (Price Waterhouse) petitions the Court for a rehearing and appropriate modification or clarification of the Court's opinion filed November 23, 1966, in the above-entitled cause. Because that cause was decided together with *Mercer* v. *Hemmings*, both causes involving as the Court recognized common questions of law and fact, and because the grounds for rehearing are related to the determinations in both, we have this day filed a substantially identical petition in *Mercer* v. *Hemmings*. The grounds in support of this petition are as follows:

I. ***The Court's suggestion that Price Waterhouse can satisfactorily perform the required auditing services for its interstate clients by "purchasing" Florida accounting services from an independent Florida-certified contractor is not feasible.***

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The Court in its first opinion in *Mercer* v. *Hemmings* held that Price Waterhouse was not entitled to obtain temporary certificates authorizing year-round staff and facilities in Florida required to service the needs of its many interstate clients; it also stated, however, that Chapter 473 could not be hedged, on the grounds unrelated to proficiency, so as to make it virtually impossible for nonresident accountants such as Price Waterhouse to comply therewith.

However, the practical effect of this Court's recent decision in this cause, taken together with the decision in *Mercer* v. *Hemmings*, is to make it impossible for Price Waterhouse to practice regularly in Florida irrespective of proficiency. The Court has sustained the validity of F.S. 473.16 and 473.23 in holding that all partners must obtain Florida certificates if the firm is to practice in Florida. Yet all the partners cannot obtain permanent certificates by *reciprocity*, inasmuch as the Board's denial of all seven applications for reciprocal certification so far considered has now been affirmed in this case in an opinion of the Court sanctioning broad discretion in the Board. Nor can the requisite certificates be obtained by *examination*. For the Board has taken the position (Motion to Vacate Stay, pp. 5-6) that the detailed undergraduate course requirements (applicable in Florida only since 1956) of F.S. 473.08, as implemented by Board Rule 20-7.02, bar from examination room many Price Waterhouse partners who completed their particular undergraduate courses twenty or thirty years ago.*

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*In addition, as discussed below, this Court appears to have left open the possibility that residence at the time of applying to take the examination, as distinguished from continuous prior two-year resi-

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Thus, the only resource open to Price Waterhouse in performing its demonstrated substantial volume of Florida work is that suggested in Point 2 of the Court's holding in *Mercer* v. *Hemmings* (p. 13):

> "It is lawful for a person holding a Florida certificate to practice accounting thereunder, accepting employment from Price Waterhouse as a client and selling their work product to Price Waterhouse for use in making the master audit of inter-state clients."

We respectfully submit that the Court has not fully considered the implications of this ostensible alternative of relegating Price Waterhouse to the subcontracting of its Florida work to independent, Florida-certified accountants.

The Court's first opinion in *Mercer* v. *Hemmings* accepted as well taken appellants' fundamental contention that Chapter 473 F.S. could not be "hedged" in such a way as to make it impossible, on grounds unrelated to proficiency, for the Price Waterhouse partners to practice their profession in Florida. It thus was not necessary or appropriate in the subsequent proceedings to elaborate beyond the original record in the Circuit Court as to the drastic impact on Price Waterhouse and its interstate clients if it were to become impossible for the firm to practice regularly in the state and it were thereby to be restricted to the purchase of services from independent Florida accountants. That was especially so since to this day not a single application for reciprocal certificates of the over 140 filed has been denied on a ground having anything to do with nonproficiency.

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dence, remains a valid requirement; if so, such a prospective residence requirement would, of itself, make it impossible for Price Waterhouse to achieve permanent certification unless all of the partners were to move to Florida.

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By reason of this posture of the case at the time of the recent decision, we respectfully suggest that this Court in proposing the "sale" alternative may not have been in a position fully to appreciate the implications of that alternative. As we pointed out on the first appeal to this Court in *Mercer* v. *Hemmings* (Brief, pp. 4-6), Price Waterhouse cannot satisfy the needs of investors, creditors and others utilizing certified financial statements, and cannot accept the requisite responsibility for the auditing work performed, if that portion of the client's business which is in Florida must be audited by an independent accountant or firm of accountants. In that connection, and so that the Court may be fully advised in the premises, we respectfully suggest the Court's attention to the annexed affidavit of Herman W. Bevis, which is incorporated herein and made a part hereof. Said affidavit more fully demonstrates the impracticability from an audit standpoint of the precise alternative now suggested by the Court, particularly in light of the strictures imposed by the prohibitions of F.S. 473.16 and F.S. 473.23 and the implementing Chapter 20-10 of the Board Rules.

For the foregoing reasons, we respectfully submit that the Court should reconsider its opinions in both this case and in *Mercer* v. *Hemmings*, with a view toward re-evaluating the Board's discretion to deny applications for reciprocal certificates and toward limiting the impact of F. S. 473.16 and 473.23 as applied here.

II. *The Court's opinion is unclear as to whether residence is a prerequisite for certification by examination.*

In its first opinion in *Mercer* v. *Hemmings*, the Court repeatedly stated that the members of Price Waterhouse could apply for permanent certificates by way of reciprocity or examination without regard to residence or clerkship.

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The Board filed a petition for rehearing and other relief in which, *inter alia*, it sought clarification as to whether the Court had struck down all residence requirements or only the requirement that residence in Florida shall have continued for two years by the time of application [Pet., p. 3]. Moreover, in the briefs submitted on the second appeal in *Mercer* v. *Hemmings*, and on certiorari in this case, considerable discussion was devoted to the distinction between the requirement that an applicant be a resident at the time he seeks to take the examination or to obtain a reciprocal certificate and the additional requirement that such residence shall have continued over the preceding period of two years.

As a result, this Court's attention was repeatedly directed to two types of residence criteria. In its recent opinion in *Mercer* v. *Hemmings*, however, the Court refers to the "lack of two years of residence" as not operating to prevent an applicant otherwise qualified from taking the examination (Opinion, p. 7), to the requirement for "two years residence in Florida prior to the taking of the examination", and to basking in the Florida sunshine "for a period of two years before taking the examination" (p. 8). Furthermore, the Court's opinion arguably seems to contemplate a prerequisite of Florida residence in referring to "the kind of citizens we want in Florida", "the advantages of Florida residence" and inviting people "to reside here" (p. 8). Finally, the Court expressly holds only that it is unreasonable to require "two years of residence or clerkship" as a prerequisite.

Moreover, this Court affirmed the denial of the application for a reciprocal certificate of petitioner Begeman in this case, notwithstanding that the Board's sole ground for denial of that application was Begeman's nonresidence in Florida (without any consideration as to whether Begeman's state of original certification had a residence require-

ment, which it did not). Since the Court in its first opinion in *Mercer v. Hemmings* treated residence requirements for both reciprocity and examination jointly, the Begeman ruling raises considerable doubt as to whether this Court in its second opinion has validated a residence requirement under F.S. 473.08 as a prerequisite to taking the examination.

We respectfully request, therefore, that the Court clarify its opinion with respect to residence requirements for examination pursuant to F.S. 473.08.

For all the foregoing reasons, it is respectfully submitted that the Court should grant this petition, order a rehearing and vacate or modify its prior decision in this cause. Because of the nature and constitutional significance of the questions involved, it is respectfully suggested that the Court invite further briefs and set the case down for further oral argument.

December 30, 1966.

Respectfully submitted,

HERVEY YANCEY,
CROMWELL A. ANDERSON,
Attorneys for Price
Waterhouse & Co.

SMATHERS & THOMPSON,
Of Counsel.

Appendix C

CERTIFICATE OF SERVICE

I DO CERTIFY that a copy of the foregoing Petition for Rehearing and Other Relief together with the supporting affidavit of Herman W. Bevis has been furnished by mail to Chester Bedell, Esq., 1520 Barnett National Bank Building, Jacksonville, Florida 32202, Attorney for Appellee.

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Cromwell A. Anderson
Of Counsel

Appendix C

IN THE

SUPREME COURT OF FLORIDA

HERMAN W. BEVIS, et al., individually and as partners doing business under the firm name of Price Waterhouse & Co., Petitioners, —*against*— MARK W. EASTLAND, et al., Respondents.	CASE No. 35,360

AFFIDAVIT OF HERMAN W. BEVIS

STATE OF NEW YORK,
COUNTY OF NEW YORK, } ss.:

HERMAN W. BEVIS, being first duly sworn, deposes and says:

I am Senior Partner of the firm of Price Waterhouse & Co., and I am one of the petitioners in No. 35,360. I make this affidavit in support of the petition for rehearing and other relief in this cause. I have read said petition and the factual matters set forth therein are true to the best of my knowledge, information and belief.

As the petition points out, the effect of the Court's decision is to prevent the Price Waterhouse firm from regularly practicing in Florida. However, the Court in its opinion has suggested an alternative route by which Price Waterhouse

might attempt to satisfy the auditing and accounting needs of its interstate clients operating in part in Florida. With all deference to this Court's efforts to find a solution to the problems presented by the stringency of the Florida statute, I respectfully submit this affidavit to demonstrate that the suggested alternative is not feasible as a matter of sound auditing procedure.

Steadily Increasing Emphasis by Investors and Management on Single Audit Responsibility

1. The United States enjoys the highest standard of living in the world. A considerable contribution to this high standard is made by corporations operating in interstate commerce, typically a corporation consisting of a parent with a number of divisions and separately incorporated subsidiaries operating in different parts of the country. These national corporations have attracted substantial amounts of permanent and short-term capital from investors and creditors. Most of these investors and creditors are sufficiently removed from the corporation that, in deciding whether to supply funds or to continue or discontinue the supply of funds to the corporation, they need credible information, contained in financial statements, about the present financial position and historical results of operations of the enterprise. The attest function of the CPA lends credibility to these financial statements. The primary responsibility for the fairness and completeness of financial communications to stockholders and creditors rests, of course, with a corporation's board of directors and its management. Nonetheless, the CPA firm which attests that these financial statements "fairly present" the financial position and results of operations assumes an important secondary responsibility to those

investors and creditors to whom the CPA firm authorizes distribution of its audit report.

2. A very substantial portion of Price Waterhouse's interstate practice involves corporations subject to the jurisdiction of the Securities and Exchange Commission. A major activity of the SEC is to protect investors by providing for full and fair disclosure of information about registrant corporations, and specifically to fix responsibility for such information. The Commission recognizes in Rule S-X that there may be two or more certifying accountants, and establishes responsibility as among them as follows:

> "*Rule 2-05. Certification of Financial Statements by More than One Accountant.*
>
> If, with respect to the certification of the financial statements of any person, the principal accountant relies on an examination made by another independent public accountant of certain of the accounts of such person or its subsidiaries, the certificate of such other accountant shall be filed . . . ; however, the certificate of such other accountant need not be filed (a) if no reference is made directly or indirectly to such other accountant's examination in the principal accountant's certificate or (b) if, having referred to such other accountant's examination, the principal accountant states in his certificate that he assumes responsibility for such other accountant's examination in the same manner as if it had been made by him.

[illegible] subsidiary portion of a business is audited by [illegible] the Commission requires either (a)

that responsibility run directly from the separate accountants to the investors in the parent company or (b) that the primary certifying firm accept responsibility for the separate accountant's work.

3. It has been the experience of Price Waterhouse, particularly in recent years, that the business and financial community is unwilling to accept the responsibility of a separate accounting firm auditing but a portion of the enterprise and is rapidly centering on fixing the ultimate responsibility for all of a corporation's audit work on the parent's certifying accountants. Increased impetus in this direction has resulted from the recent *Atlantic Acceptance* case in Canada. There, investors and creditors of Atlantic Acceptance appear to have lost tens of million of dollars, the loss traceable largely to one of Atlantic's subsidiaries which was audited by an accounting firm different from the parent company's principal auditors. See, for example, the account of that business disaster in *Barron's Weekly* for August 16, 1965, page 9, copy of which is annexed hereto as Exhibit A.

4. The recent experience of Price Waterhouse in dealing with its own clients has shown that stockholders, directors and management alike wish to pin the responsibility for the fairness of the consolidated financial statements squarely on the parent corporation's auditors. Stockholders at annual meetings have repeatedly inquired as to whether Price Waterhouse, as the auditors of the parent corporation, audited all segments of the business or at least accepted full responsibility for any separate audits. Boards of Directors and audit committees of outside board members have raised even more pointed questions, e.g., as to whether the firm will accept direct responsibility, as auditors for the parent, for

work to be done on recently acquired subsidiaries or divisions theretofore employing another auditing firm or firms.

5. It is in this context, that is, of satisfying the economic need for credible financial data about an enterprise engaged in multi-state commerce, that we must examine the question of fixing responsibility for an independent Florida CPA's audit of a portion of a business.

Impropriety of Principal Auditors' Assuming Ultimate Responsibility for Audit Work "Sold" to Them by Independent Florida Accountants

6. F. S. 473.16 and 473.23 prohibit a nonresident firm from practicing in the State through a representative, agent or manager, and Board Rule 20-10 implements those stringent statutory provisions. The regulatory program thus contemplates that a Florida certified public accountant who deals with a nonresident firm must be independent of that firm in all essential respects. Yet if the Florida CPA, in an audit of a part of a multi-state business, is independent of the out-of-state firm performing the "master audit", then the latter cannot accept responsibility for the Florida CPA's work. This is simply because the out-of-state firm cannot state of its own knowledge that the Florida audit was conducted in accordance with "generally accepted accounting standards". According to the American Institute of Certified Public Accountants ("Statements of Auditing Procedure No. 33, Chapter 2), there are ten "generally accepted auditing standards". These standards have been approved and adopted by the membership of the AICPA and are, therefore, binding on all members (including all the Price Waterhouse partners). Six of those standards are as follows:

Appendix C

"General Standards

1. The examination is to be performed by a person or persons having adequate technical training and proficiency as an auditor.
2. In all matters relating to the assignment an independence in mental attitude is to be maintained by the auditor or auditors.
3. Due professional care is to be exercised in the performance of the examination and the preparation of the report.

"Standards of Field Work

1. The work is to be adequately planned and assistants, if any, are to be properly supervised.
2. There is to be a proper study and evaluation of the existing internal control as a basis for reliance thereon and for the determination of the resultant extent of the tests to which auditing procedures are to be restricted.
3. Sufficient competent evidential matter is to be obtained through inspection, observation, inquiries and confirmations to afford a reasonable basis for an opinion regarding the financial statements under examination."

7. From the foregoing it will be seen that, to accept complete responsibility for the Florida CPA's work, the out-of-state CPA firm would have to satisfy itself on such matters as the adequacy of technical training and proficiency of persons engaged in the Florida work, their independence

and mental attitude, whether they use due professional care, whether assistants were properly supervised, whether the extent of audit tests were compatible with the client's internal controls and whether sufficient competent evidential matter was obtained. Most of the foregoing conclusions can be reached only by an intimate knowledge of the Florida CPA firm and its personnel, the client's personnel, procedures and records, and, most important, the day-to-day conduct of the audit. Such intimate knowledge is completely incompatible with the "independent contractor" concept.

8. In addition to the foregoing considerations of fixing audit responsibility, particularly those of assuring conformity with "generally accepted auditing standards", there are intensely practical difficulties in the independent contractor concept, especially when dealing, as is so often the case, with parent and subsidiary companies or divisions. These difficulties arise out of the circumstance that the Florida business is only a portion of the whole. Some of these difficulties are as follows:

(a) There are usually many intracompany transactions between the Florida operation and the rest of the enterprise. Good auditing requires that the same firm examine both sides of these transactions. Often the same auditing personnel must cross state lines to do this.

(b) Some of the operations of a company are centrally [illegible]

Effective independent audits of these pieces is impossible; audits of them must be done as a whole.

(c) Most parent companies promulgate company-wide policies, procedures and instructions, both operating and accounting. Seeing that these are adhered to is an important part of an auditor's work in large company audits. While manuals and instruction letters reduce much of these matters to writing, again these often must be supplemented by background and experience of parent company audit personnel moving across state lines to *participate in local audit work*.

(d) Parent company officials and personnel move freely among the operations of their enterprise and have a detailed knowledge of local operations and conditions. They must and do continually discuss with audit personnel, at company headquarters, problems, plans and improvements in outlying areas. This could not be done if Florida audits were conducted by independent contractors.

9. An additional practical problem arises as to the particular manpower and capital needs in servicing large companies. Not infrequently such companies or their parents become new clients of these out-of-state accounting firms or unexpected large special projects are undertaken for existing clients. In both of these cases, sudden and substantial increases in manpower and working capital are often required of the accounting firm. It is a proven practicality, if not a necessity, that Florida CPA firms, as independent contractors, would not be in a position to [illegible] these needs satisfactorily on short notice. [illegible] other hand, with a larger and broader base of [illegible]

and financial resources, can and regularly do meet such situations.

10. In order to assure that the Florida work will be competently and thoroughly handled consistent with the exacting standards demanded by the out-of-state firm's clients, that firm at a minimum must be free to do any and all of the following with respect to the accountants on the local scene in Florida (or for that matter, in any other state):

(a) review and supplement policies and procedures with respect to recruiting, training, supervision and assignment of personnel;

(b) participate in the planning, conduct and review of audit work;

(c) arrange visits, and temporary and permanent transfers, of personnel between national and local operations;

(d) lend and borrow staff; and

(e) provide temporary, and possibly long-term, financial assistance to meet working capital requirements.

Yet such activities plainly conflict with the independent contractor concept established by the statute and implementing Rule.

Compounded Adverse Effect of Multi-State Application of Independent Contractor Concept

11. The foregoing discussion has been based upon the supposition that Florida is the only [illegible] which it

now is—to a firm's integrated national practice throughout the United States. It may be assumed, however, if the public interest in the State of Florida is best served by reserving the practice of accountancy in the State of Florida to Florida CPA firms, that the same approach would equally be in the best interest of the citizenry in each and every other state. The implications of such assumption merit examination.

12. Price Waterhouse alone has as clients more than 200 of the companies listed on the New York Stock Exchange. Most of these companies have multi-state operations, as do many other of the firm's clients not listed on the New York Stock Exchange. It is inconceivable that the audits of the operations of these companies might be carried out by ten, twenty, thirty, forty or fifty different state firms as "independent contractors" to the parent company's auditing firm. Investors, directors and managements would, of course, find it impossible to fix any kind of meaningful auditing responsibility. It would be impossible to coordinate an audit of interrelated interstate operations and transactions. It would be impossible for the parent company auditors to state of their own knowledge that the audits of the various segments had been carried out in accordance with generally accepted auditing standards. It would be impossible for them to state of their own knowledge whether the financial statements fairly presented the financial operations and results of the entire enterprise.

13. The parent company auditor would only be in a position to report on that segment of the whole business which happened to fall within that state in which he is entitled to act as independent contractor. The stockholder

could only get his assurance from some ten, twenty, thirty, forty or fifty certificates of the separate state firms. Even then, the stockholder could not assess relative responsibility among the firms unless the certificates were accompanied with the figures applicable to the business in the respective states and those figures would be nearly meaningless because of the fluidity of interstate operations carried on by most national companies.

14. The possibility of the audits of nation-wide companies being carried out by a host of CPA firms as independent contractors is utterly impracticable. It flies in the face of the manner in which an important segment of economic activity is being carried out today, namely, that of the publicly owned multi-state, national and international corporations. Yet that is a distinct prospect in store if it is permissible for one state to confine the accounting practice to CPA firms in that state which are "independent" of firms of any and all other states. In terms of the adaptation of public accountancy to the economic and social environment, such a development, in 1966, would set public accountancy back to the previous century.

/s/ Herman W. Bevis
Herman W. Bevis

Sworn to before me this
28th day of December 1966.

/s/ [illegible]
Notary Public

[illegible]

Appendix C

Exhibit A

BARRON'S [8/16/65]

AFTER THE FALL

The Collapse of Atlantic Acceptance Has Been a Jolt to Lenders

By F. J. McDiarmid*

As every Canadian schoolboy knows, the Americans burned Toronto during the War of 1812. Perhaps as belated revenge, a corporate citizen of Toronto, Atlantic Acceptance Corp., recently set some fire alarms ringing in a number of leading American financial centers. In Hartford, Conn., all five major life insurance companies were scorched and at least one was badly burned. Beyond the borders of the Nutmeg state, at least 20 other institutional investors also have suffered damage.

Grew Like Topsy

Atlantic Acceptance is a diversified finance company, medium in size by U.S. standards, but large for Canada. Its receivables recently totaled about $150 million. Some 53% of its common stock is owned by Great Northern Capital Corp., an investment subsidiary of Lambert & Co. of New York. Atlantic stock until recently was traded on the Toronto Stock Exchange, but has been delisted. The company was put into receivership in mid-June, owing to its inability to meet a short-term note maturity of $5 million. However, its troubles go much deeper.

Atlantic was an unusual finance company in several ways. To begin with, it grew like Topsy, notwithstanding the

*Mr. McDiarmid is a vice president of a large investment company.

ceivables mounting from $19 million at the end of 1960 to $129 million four years later (and to $150 million by the time of its collapse). While nearly all its loans were made in Canada and payable in Canadian dollars, its term borrowing was done largely in the United States, payable in U.S. dollars. These arrangements may have sprung from New York's control of the stock; they also reflected at least in part Atlantic's inability to sell all the debentures required to finance its rapid growth in Canada.

Impressive List

Finance company debentures, payable in U.S. dollars and yielding 6% or better, and mostly of a senior and allegedly secured status, looked good to no fewer than 30 substantial U.S. and Canadian investors. Therefore, Atlantic was able to accumulate a rather long list of impressive U. S. institutional lenders, mainly drawn from the life insurance fraternity. Canadian term lenders remained relatively light in the Atlantic picture.

For a finance company, Atlantic was short on bank lines, having only one line with a major Canadian bank. It sought to compensate by selling a heavy volume of commercial paper. At the time of its demise, Atlantic had a very long list of commercial paper holders, including some of America's leading industrial companies or their Canadian subsidiaries.

At the time its insolvency was announced, Atlantic owed about $105 million on a senior secured basis. About half of this sum was in the form of term debt, all but a small part held by U.S. financial institutions, largely life insurance companies, and payable in United States dollars. The remainder was largely short-term commercial paper, much of it also held south of the border. It was the latter that

triggered the company's downfall. Pressure on U.S. lenders to keep their money at home for balance-of-payments reasons made it difficult for Atlantic to renew its short-term notes. When it no longer could do so, it went into receivership.

Junior Debt Larger

Besides its senior secured debt, Atlantic has outstanding about $17 million of subordinated term debt, about $14 million in a so-called senior layer and $3 million in a junior layer. This debt also is largely held by U.S. financial institutions. Below the level of the debt as shown on Atlantic's books stood over $5 million of preferred stock, largely held by U.S. and Canadian financial institutions, foundations, or pension funds, and common equity which, including surplus, had a stated value on the books of over $9 million.

In the investment of its assets, Atlantic showed plenty of imagination. At the time of its insolvency, its books revealed about $60 million of sales finance receivables, over half of it motor car paper; about $38 million of small loans; and $52 million of commercial loans. The last-named were largely in a separate subsidiary, Commodore Sales Acceptance Co. and were allegedly the special responsibility of Atlantic's now-resigned president. These were very largely head office loans, not made through Atlantic's 100-odd branches throughout Canada.

In the area of commercial lending the largest losses are likely to occur. One single commercial loan, the largest one made, was for $10 million—an amount larger than the entire stated common stock capital of the company, including surplus. It was made on the security of part of the equity in the Lucayen Beach Hotel in the Bahamas. Other large

commercial loans made by Atlantic promise only small recovery.

Grim Outlook

It is far too early yet to try to assess with any degree of accuracy the extent of the losses which Atlantic's creditors and other investors in the company will suffer. Preliminary information indicates that it will take something of a miracle to get the creditors out whole, including payment of principal and accrued interest, and the premium required for payment in U. S. dollars. This means that the outlook is pretty grim for the preferred and common stockholders. The total losses suffered are likely to be of a magnitude roughly comparable to that of the Billie Sol Estes ammonia tank affair, but not nearly so large as in the case of the salad oil business in New Jersey. In any event, Atlantic Acceptance stands to become the biggest single financial debacle to take place in Canada for many years.

It is not too early to draw some object lessons from the Atlantic fiasco for the future protection of investors in finance companies (and for the guidance of the managements of such companies as use billions of dollars of other people's money). In view of the vast growth in the finance business in the U. S. and Canada during the last 20 years, and also the extent of human frailty, some cracks in the structure were bound to occur sooner or later. The yawning crevasse which has appeared in Atlantic Acceptance is well worth appraising.

Lines of Defense

The investor in finance company securities, in theory at least, has a number of lines of defense. First, there are the experience, ability and integrity of the management, includ-

ing presumably the company's directors. Second, there is the periodic check upon management's activities and results provided by the reports of the auditors. Third, there is the policing power of banks lenders, reinforced by their stability to withdraw their lines of credit on relatively short notice. Fourth, there is trade gossip concerning the operations of the company; that is, what its competitors say about it. It is a sad reflection in the Atlantic case that the first three lines of defense collapsed; only the fourth saved at least one institutional investor from accepting a subordinated position in the Atlantic debt structure a few weeks prior to the crash.

As for the management element in Atlantic, the single speculative loan which exceeded the entire common stock equity of the company speaks loudly enough. Atlantic's rapid growth was achieved partly at least by a policy of speculative lending. In a highly competitive business, rapid growth sometimes may reflect a willingness to do business on terms which competitors have turned down as being too risky.

Liberal Bookkeeping

The liberal bookkeeping practiced by the company was another reflection on management; Atlantic took an unusually large part of its finance income into earnings as soon as it made a loan, thereby increasing immediate profits at the expense of future results. The warning here is that such liberality may penetrate other parts of a company's operations, most specifically in the granting of credit.

And what about the directors of Atlantic, particularly those with a financial background, whom at least some institutional debenture holders regarded as watchdogs on

their behalf? Did they know what was going on? If so, they must share the responsibility of management for the fiasco. If not, they were directors who apparently failed to live up to their responsibilities. The lesson here is that a person should not allow his name to be used in the roster of directors of companies handling large amounts of other people's money, and serving as a magnet for funds, unless he is prepared to act responsibly.

In the finance business, investors willy-nilly are heavily dependent on audit reports. The reason is simply that the assets consist not of land, buildings or tangible things of any kind, but primarily of promises to pay, which quickly can change their quality and nature. Poor management can wreck such a company in a remarkably short time.

The investor in a finance company, even a large and supposedly sophisticated financial institution, is in no position to examine individual receivables. Thus, he must rely on the reports of the auditors who undertake this task and are paid for it. The audit reports on Atlantic Acceptance, prepared by a well-known firm of accountants, furnished scant protection or warning to investors. The audit report for the end of 1964, a few months before the blowup, gave no hint of the hidden dangers.

"In our opinion, which insofar as it relates to the amounts included for subsidiary companies whose accounts have not been examined by us is based solely on the reports of other chartered accountants, the accompanying consolidated balance sheet and consolidated statements of income and retained earnings present fairly the financial position of the companies as at December 31, 1964, and the results of their operations for the year ended on that date, in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding year."

Appendix C

Technical Out

This statement no doubt gives the auditing firm a technical out, for they did not examine at all the books of Commodore Sales Acceptance, which held the commercial receivables (over one-third of the total), and where the principal loss potential seems to lie. In this area they accepted without question the findings of a small, obscure auditing firm, totally unknown to most of Atlantic's creditors. However, the plain inference which most investors would draw from the above quote is that the principal auditors had confidence in the other auditing firm, or that the part of the business covered by that firm was minor. If one cannot assume this much, the audit report would have no meaning since it would contain a hole large enough to drive a truck through. Such in fact was the case.

It is not suggested that the principal auditing firm intended to mislead creditors and other investors in Atlantic. However, the form and content of their reports had the effect of doing roughly that. As a minimum, its reports should have spelled out precisely the areas not covered in the audit and the audit of the firm covering such areas should have been attached. Since the Atlantic fiasco hit nearly all investors in that company as a complete surprise, it is obvious that the audit reports did not fulfil the principal function of such reports, which is to keep investors and other interested parties appraised as to the company's real overall condition and soundness.

Any audit report on a finance company which makes commercial loans should list the amounts of the larger individual loans, and the type of business or industry in which the borrower is engaged. No such list was available to the investors in Atlantic Acceptance. In fact, the last audit report was

a very slim and inadequate document indeed, compared with the audits of most U. S. finance companies.

What should be done about this state of affairs? Since investors in finance companies, particularly institutional investors, must rely so heavily on audit reports, they might be well advised to pay all or part of the auditing fees. In such case the auditor, as their agent, might feel a more direct sense of responsibility toward them. This, of course, might require charging the finance company a little extra interest. If audit reports were thus furnished to large institutional lenders at their cost, on a confidential basis, they could be very specific and detailed on the subject of large commercial loans and the quality of the collateral.

Next comes the matter of bank borrowing. Atlantic had only one substantial bank line. Although its head office is within five minutes' walking distance of the executive office of Atlantic, the institution involved must have done precious little policing since it was caught to the tune of several million dollars. Too much short-term commercial paper in lieu of bank credit was the proximate cause of Atlantic's downfall, though by no means the root of its ills. Commercial paper is the most skittish of all types of capital sources available to a finance company; too great reliance upon it is obviously dangerous.

Deaf Ears

A common practice in more conservative circles is to limit such paper to the amount of unused bank lines available, so that if holders of commercial paper decide to cash in their chips, bank lines will be available to take their place. Atlantic had no such recourse. The urging of some of its debenture

holders that it put some curb on its commercial paper borrowing fell on deaf ears.

It has been common practice for Canadian finance companies to back their senior borrowing by receivables in allegedly good standing equal to 115%, or some such percentage, of the amount of such borrowing. These receivables are deposited with a trustee. As a result, Canadian finance companies have tended to claim freedom from some of the restrictions imposed by lenders on their counterparts in the United States. They have done so on the theory that a pledge of receivables adds to the security of their senior debt.

The Atlantic debacle, however, has blown this theory sky-high. The custodian bank in this case accepted without question, and apparently without checking, the representations of Atlantic's management as to the quality of the receivables pledged. Such pledge now yields no assurance that even the senior security holders of Atlantic will come out whole. Hence it seems inevitable that in future, institutional lenders to Canadian finance companies will put little weight in such a pledge of receivables and will seek to bolster their position by other means, such as the imposition of tight borrowing ratios.

Because of the Atlantic fiasco, Canadian finance companies can expect to face an overhaul of their borrowing and reporting methods, particularly insofar as the adequacy of audit reports is concerned. Such reports should cover the company's entire operations and not leave gaping holes. Some form of public regulation, such as that now borne by insurance companies and banks, may very well be imposed. All of this, however, will provide no substitute for good management and a responsible board of directors.

APPENDIX D

MAJORITY REPORT OF THE FLORIDA STATE BOARD OF ACCOUNTANCY

TO THE

HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA TALLAHASSEE, FLORIDA

May 1, 1967

ANALYSIS OF FLORIDA ACCOUNTANCY LAW AND RECOMMENDATIONS FOR CHANGES THEREIN

Appendix D

(Letterhead of)

STATE BOARD OF ACCOUNTANCY

STATE OF FLORIDA
GAINESVILLE, FLORIDA

MAJORITY REPORT OF THE FLORIDA STATE BOARD OF ACCOUNTANCY

TO THE

HOUSE OF REPRESENTATIVES OF THE STATE OF FLORIDA TALLAHASSEE, FLORIDA

May 1, 1967

ANALYSIS OF FLORIDA ACCOUNTANCY LAW AND RECOMMENDATIONS FOR CHANGES THEREIN

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I—Introduction

A. *House Resolution*

During the 1965 session of the Florida Legislature, many legislators became aware for the first time of a serious conflict which had developed between large National accounting firms and the accounting profession in Florida. The legislators also became concerned about the litigation then being pressed in the State Supreme Court, challenging the Florida accountancy laws' basic precepts and philosophies relating to non-resident practice, reciprocity, etc. Obviously wishing to avoid passing legislation in the climate of charge and counter-charge, claim and counter-claim, engendered by this conflict, the House requested the State Board of Accountancy to make a study of the accountancy law and submit a report of its study to the 1967 Legislature.

The designation of the Board was made in a Resolution adopted by the House of Representatives on the final day of the 1965 regular session. The pertinent part of the Resolution reads as follows:[1]

> "Be it resolved by the House of Representatives of the Legislature of the State of Florida that the State Board of Accountancy be requested to study in detail and reappraise the present accountancy laws of the State and its rules and regulations in the light of the current business trends and conditions, adopting such changes in regulations as it deems necessary and recommending to this House of Representatives at its next regular session any changes in the law which it may believe will be beneficial to the State and to the accounting profession.

[1] The entire Resolution is reproduced at pages 57-58, "Analysis of House Concurrent Resolution ... Florida Accountancy Law," attached hereto and marked Exhibit A. Throughout this report as much reference as is practical will be made to the exhibits accompanying the report, so that the report itself can be kept as brief as possible.

"BE IT FURTHER RESOLVED that a copy of this resolution be certified to the State Board of Accountancy."

B. *Methods Employed for Study and Implementation*

The Board's approach to carrying out the charge placed upon it by the Legislature was threefold. First, an analysis of the law as presently written, but modified by a series of court decisions was made for the purpose of ascertaining the problem areas. This analysis was informal and consisted principally of a verbal collation by various Board members of their recollections of administrative problems encountered by the Board during their terms. It quickly became apparent that the problem areas were (1) those related to the practice of accountancy by non-residents, and (2) those related to administration, definitions, education, etc.

The second approach was to seek the views of the public, individuals and firms, professional societies, and the business community, on all matters relating to our law and the practice of accountancy thereunder. Again, the methods employed were largely informal and were carried on by the individual Board member through interviews, informal discussions, etc., except for a formal hearing which was held in Jacksonville on December 16, 1966, and at which a number of briefs were submitted.[8]

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[8]Pertinent position statements or other documents submitted at the hearing, or subsequently in reply to documents previously submitted, are attached hereto and identified as follows:

Exhibit A—*Analysis of Issues Concerning Florida Accountancy Law*, submitted by Florida Institute of Certified Public Accountants.

Exhibit B—*Brief for National Firms*, submitted by Mr. Frank A. Graham, Jr. on behalf of six National firms.

Exhibit C—*Reply Brief*, submitted by Mr. Frank A. Graham, Jr. on behalf of the six National firms, replying to Exhibit A.

Appendix D.

The third approach was to adopt such changes in the regulations of the Board as deemed necessary (1) to conform the regulations to the law as interpreted by the Florida Supreme Court, and (2) to improve administrative and regulatory procedures.

II—Problems in the Practice of Accountancy

A. *Present Law*

The present Florida Accountancy Law, Chapter 473 F. S. and the regulations thereunder were compared with the accountancy laws and regulations of all the other states of the United States, as currently reported in the Commerce Clearing House Reporter, "Accountancy Laws." Based upon this study, the Board is of the opinion that the Florida law is the equal of any and superior to most other accountancy statutes in the United States. Naturally, it is not perfect, but neither is it obsolete or incapable of being accommodated to modern conditions, as has been charged by some.

Based on the tenor of the House Resolution and the approach of all persons appearing before the Board, it became obvious that the main problem in the area of the practice of public accountancy was that of the out-of-state firm serving its Florida clientele. Under the present law, out-of-state firms are permitted to service their Florida clientele under the temporary certificate system set forth in Section 473.14 of the Florida Statutes.

Section 473.14 permits an out-of-state firm to practice accountancy in Florida in fulfilling a specific engagement contracted for outside of the State, by securing a 90-day permit from the State Board. The purpose of this section is to permit a Florida business, or person, to avail himself

of the services of the accountant of his choice, regardless of where such accountant might reside. By providing that the engagement for the services must be contracted for outside of the State of Florida, the Florida business or person voluntarily waives the protection afforded him by the high standards required of Florida accountants by the Florida Accountancy Law. Permitting the out-of-state accountant to enter Florida to perform this specific engagement obviates the necessity for the Florida business or person to send his books out of the state to be audited. The benefits of this procedure under our present accountancy law to the business community are obvious. Obtaining a temporary certificate is a simple procedure and presents no great problem.

Under the Supreme Court's decisions and the Board's amended rules relating to certificates by reciprocity, which implement Section 473.19, Florida Statutes, CPA's from other states who meet Florida's educational requirements and become bona fide residents of Florida, may obtain Florida certificates by reciprocity if the applicant already possesses a certificate from another state based on the uniform CPA examination. It is therefore possible for all out-of-state firms who wish to organize a Florida firm, to cause one or more qualified members of that firm to move to Florida and obtain a Florida certificate by reciprocity. Under the recent Supreme Court decisions, a Florida firm so organized, or some other firm already established may accept employment from an out-of-state firm as a client and sell the work product of the Florida firm to the out-of-state firm for use in making master audits of its inter-state clients. Naturally, the Florida firm may not come under the domination or control of the out-of-state firm to the extent that it would create a violation of Section 473.16, i.e. the Florida

firm may not become the representative, agent or manager in Florida of the out-of-state firm.

B. *Position of Florida Institute of CPA's*

In appearances before the Board presenting their views on the matter of inter-state practice, the Florida Institute of Certified Public Accountants takes the position that the present law, as explained above, permits any out-of-state firm to adequately serve its Florida clientele.[3] Under this view, no change in the law would be necessary.

C. *Position of Out-of-State National Firms*

The position of the six out-of-state National firms is that the present procedures are too cumbersome in the light of modern-day accountancy and that they are unable to render to their Florida clients the kind of service that these clients should have. The six out-of-state National firms also take the position that the correspondent relationship is not satisfactory for a number of reasons.[4] They recommend that the law be amended to permit them to either open branch offices in Florida or form subsidiary firms operating under their National names.[5] As to all other out-of-state accounting firms or individuals, they would continue with certain modifications and restrictions the present system of temporary permits.[6]

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[3] Pages 31-34—Exhibit A.

[4] Pages 6-7—Exhibit B.

[5] Page 12—Exhibit B.

[6] Page 13—Exhibit B.

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D. *Comments By Board On The Positions*

In presentations before the Board by the representatives of the six out-of-state National firms and by representatives of the Florida Institute of Certified Public Accountants, many grounds were advanced by each group to support their opposite positions on the matter of inter-state practice. To the majority of the Board, all of the grounds advanced by each party gave the appearance of being well considered and sincere. On most points there did not appear to be irreconcilable differences in their views, yet the chances of agreement on a common course of action or solution to the problem appeared nil.

A majority (four members) of the Board feels that while agreement on all the other matters might be reached, the six out-of-state National firms would not agree to any solution that did not enable them to carry on the practice of public accountancy in the State of Florida under their own names. Furthermore, it appears that the position of the Florida Institute of Certified Public Accountants is equally adamant in its opposition to the practice in the State of Florida by these firms under their National names. While many arguments involving standards of the profession, service to clients, etc., were advanced both persuasively and logically by the two parties, in the Board's view the reason they will never reach agreement is that the economic consequences of their two views are so directly opposed. Stated bluntly, Florida has become a rich market for accounting services to local businesses and the out-of-state National firms want a part of it. The Florida practitioners do not want them to have it.

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E. *Public Interest*

In none of the presentations by the two parties to the Board, or by any other party, was the public interest mentioned except in a passing manner or when trying to support an argument by reference to the public interest concept.[1] Accordingly, as the public interest is the principal reason for regulatory bodies, it became necessary for a majority of the Board to examine the controversy from the public interest viewpoint and ascertain on its own, and as objectively as possible, just how the public interest was affected by the conflicting views.

The first question faced by the Board related to the client need, as distinguished from the desire, of the out-of-state firms to practice in the State of Florida to a degree greater than that presently permitted by law. In their presentations to the Board, the out-of-state National firms emphasized the fact that most of the large business enterprises in Florida were audited by out-of-state firms and that the needs of these businesses for constant and continuing accounting services were great. In Exhibit C, under the heading of "Florida Firms Employing 1,000 or More," are listed the out-of-state firms auditing these Florida firms. An examination of the firms listed indicates that the great majority of these businesses audited by out-of-state accounting firms are not "Florida Firms," but are only branches of out-of-state industrial corporations or subsidiaries of such corporations. In fact, no more than 15 out of the 70 firms listed might be considered as Florida-based firms audited by out-of-state accountants.

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[1] Pages 8-9—Exhibit B, for example.

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The degree of services required by large industrial firms with their own sophisticated auditing and tax departments, other than the annual audit, major tax advice, and occasional specialized management services work, is negligible. It should be noted that auditing the branches of National industrial firms located in Florida rarely consists of more than observation of inventory-taking and confirmations of accounts receivable.

It appears to the Board, therefore, that the Florida business community would not be appreciably benefited by the admission of the out-of-state firms, and that the most that could be said for their admission is that it would provide a convenience for that portion of the Florida business community which employ them. In support of this conclusion, it may be noted that the managing partner of one of the six firms stated to the Sub-committee on Business Regulation of the Governmental Reorganization and Efficiency Committee, that to the best of his knowledge, the presence or absence of any particular accounting firm in Florida had never been a factor in the decision of an industry to locate or not to locate in Florida.

The second question which the Board felt to be of importance to the public was the effect upon the business community of the disappearance of a substantial number of the Florida firms which would follow immediately upon the admission to practice within the State of out-of-state National firms. For many years the number of large and medium independent firms throughout the United States is being reduced by reason of mergers with National firms. In some areas, these mergers have been so widespread as to deprive the local business community of any large independent accounting firm. In these areas, large and medium-

sized businesses are confined to two choices in the selection of their accountants—a National firm or a small local firm which might not have the manpower to adequately serve such business. The Board is unable to answer whether the disappearance of a substantial number of large independent accounting firms in Florida by way of merger with National firms would be in the public interest or not. However, the Board is aware that such concentration of business and the elimination of competitive firms is contrary to the clearly-defined public policy of the United States, and that business mergers and activities which tend to eliminate competition and leave the business community to the mercy of a few is frowned upon.

The third question concerning the majority of the Board relates to the lowering of standards which have evolved for the protection of the public. In presentations before the Board, the six out-of-state National firms very strongly pointed out their high technical abilities and denied that they could possibly contribute to any lowering of standards if they were permitted to practice in the State of Florida. There is no question as to the technical competency of the six out-of-state firms represented, but legal counsel for the Board has advised that legislation which would permit certain firms to operate in Florida because they were large and deny other out-of-state firms the same right because they were not big enough, could not be supported in the courts. If this view is correct, it is obvious that no legislation that would not have universal application to all CPA's should be adopted. A program which would permit *any* out-of-state firm to open a branch office in Florida, staffed by Florida CPA's, would at first glance appear to protect the high standards of Florida by permitting only Florida CPA's to practice here. However, this would be a naive conclusion

because the Florida partners of an out-of-state firm would have their income, their future, and their very livelihood governed by senior partners of the firm located outside of Florida. Clearly, they would be under the complete domination and control by the out-of-state firm. In this view, it is apparent that the out-of-state firm could be composed of CPA's, none of whom could meet the standards of Florida, yet the firm would be permitted to carry on a Florida practice under the umbrella of the Florida CPA.

It is the view of the Board that any procedure involving the use of branch offices or subsidiary partnerships cannot help but lower the standards of the profession in Florida and thus harm the entire State, unless the technical and moral standards of each out-of-state partner of such firm are passed on by the State Board of Accountancy—an obviously impossible administrative task. The adoption of legislation which would permit out-of-state firms—good, bad or indifferent—to open branches in Florida, or create subsidiary partnerships, would have to be with the understanding and belief that while a lowering of the standards of accounting service to the public of Florida would result, other benefits would ensue to the business community and to the public which would outweigh the damages created by lowered standards.

F. *Conclusions and Recommendations*

It appears to the majority of the Board (1) that the Florida business community would not be benefited by modifying the provisions of the present law relating to the practice of accountancy by out-of-state accounting firms in Florida; (2) that the present provisions do not result in any real inconvenience to the clients using out-of-state ac-

counting firms, or to such firms serving Florida clients; and (3) that the modifications suggested by the out-of-state National firms would result in the lowering of the accounting standards in Florida and lessening of the public protection presently afforded by the regulation of accounting by the State.

Accordingly, a majority of the Board recommends to the legislature that it leave unchanged the provisions of the present law in respect to the circumstances and arrangements under which out-of-state accounting firms may render public accounting services in Florida.

The majority of the Board is of the opinion that, while the present system does permit out-of-state firms to adequately serve its clients, certain mechanics can be adopted which would meet valid objections to the present procedure. One of these objections is that under the present law, Florida CPA's who have a correspondent relationship with out-of-state firms are prevented from stating that this relationship exists, on its stationery or other communications to its clients, because this could be considered as violation of the agency or representative prohibition in Section 473.16. The Board does not feel that this prohibition serves any worthwhile purpose and recommends that the law be changed to permit any party to a correspondent relationship to show such relationship on its stationery or otherwise.

The other objection relates to the degree of supervision which the out-of-state firm may exercise over the work performed by Florida correspondent firms. Accounting firms whose name the work of other firms are having to accept more and more responsibility for the second firm's work incorporated in statements put out by it. Under Section 473.16, a violation would probably occur if the out-of-state firm exercised any major control over the Florida firm in the

performance of work by the Florida firm as correspondent for the out-of-state firm. The Board feels it is unfair to require an out-of-state firm to accept a major degree of responsibility for work performed by its correspondent without being able to supervise that work. Accordingly, a majority of the Board recommends that in those cases where the Florida correspondent performs work for an out-of-state firm, on an engagement for which the out-of-state firm has obtained a temporary certificate, the out-of-state firm be permitted to supervise the work of the Florida firm on that particular engagement to the extent that it deems necessary, and that such supervision shall not be deemed to create an agency, representative or managerial relationship as contemplated in Section 473.16. Such supervision will not work to relieve the Florida firm of its responsibility for the maintenance of high standards, nor will it weaken the regulatory control now available to the Board.

III—Problems Related to Administration

Certain changes in the definitions and terminology used in the present law and the incorporation therein of the modifications by Court decisions would make the Accountancy Law more readily understandable, and if an over-all revision of the law is contemplated, such changes and modifications should be included in such revision. They are not numerous and are not important enough in themselves to require separate legislation. The details of the changes recommended by the Board are set forth in Exhibit D, but may be summarized as follows:

473.02—Public Accounting Defined—The Board recommends certain changes in this section which are intended for

the purpose of clarifying definitions used therein and to broaden the scope of public accountancy to reflect the increased responsibilities placed on accountants by various regulatory bodies, court decisions, etc.

473.08—Qualifications of Applicant, etc.—The Board proposes that this section be changed so as to bring the residency section into agreement with the recent decision of the Florida Supreme Court, to eliminate certain expired provisions, and to clarify the meaning of a major in accountancy and certain other terms.

473.19—Certificates Granted to Holders From Other States—The Board recommends that this section be amended so as to bring the residency and experience sections into agreement with the recent decisions of the Florida Supreme Court.

473.26—Each Member of Firm Must Have Certificate, etc.—It is recommended that this section be amended so as to clarify the responsibility for supervision of branch offices.

Respectfully submitted,

/s/ Arthur I. Hemmings
Arthur I. Hemmings, Chairman
State Board of Accountancy

Joined by Members:
Mark W. Eastland, Jr.
James D. A. Holley
Benjamin E. James

A supplementary report will be submitted by Board Member, Charles W. Johnson, Jr.

Appendix D

CHANGES IN CHAPTER 473, FLORIDA ACCOUNTANCY LAW, RECOMMENDED BY BOARD OF ACCOUNTANCY

1. *Section 473.02, Florida Statutes*—It is recommended that certain sub-sections be deleted or amended to read as follows:

Section 473.02 "Public Accounting" Defined.—

(1) Who holds himself out to the public in any manner as one who is skilled in the knowledge, science and practice of public accounting and as qualified to render professional services as a public accountant for compensation; or

(4) Who prepares, signs or certifies for clients, reports of audits, balance sheets and other financial, accounting and related schedules; exhibits, statements, or reports which are supplied to the client or others upon instruction of the client for any purpose, or are to be filed with a court or other tribunal or governmental agency subject to the provisions of Section 473.29, or used for any other purpose; or

Present Section 473.02 (6) should be deleted in its entirety.

2. *Section 473.08, Florida Statutes*—It is recommended that certain sub-sections be deleted or amended to read as follows:

Section 473.08 Qualifications of Applicant for Examination; Certificates to Successful Examinees; Standards.—

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(1) Any person who is a citzen of the United States and a bona fide resident of the State, over the age of twenty-one years, of good moral character, and a graduate of a high school with a four years' course of study, or who has had an equivalent education, and who shall otherwise meet the qualifications specified in the rules of the Board, shall be entitled to take an examination for the purpose of determining whether or not such person shall be permitted to practice in this State as a certified public accountant, provided such person

(a) is a graduate of at least a four-year accredited college or university course, and

(b) at the time of application must have received a degree with a major in accounting or subsequently must have completed such courses which would constitute a major in accounting as defined in (4) (b) of this Section.

(2) A person who qualifies to take said examination pursuant to provisions of paragraph (a) of subsection (1) of this section, and who takes and passes said examination, shall not receive a certificate as a certified public accountant and shall not be permitted to practice public accounting in this State until he shall have completed one year of work in a certified public accountant's or public accountant's office or certified public accountant's office of another state, or shall have met equivalent standards as determined by the Board in other employment, or until he shall have successfully completed an additional accredited one year accounting course at an accredited college or

university, and proof of compliance with the provisions of this paragraph shall be established in such form as is prescribed by the State Board of Accountancy.

(3) For the purpose of this section, a resident of Florida is defined as one who has resided in this State immediately preceding the filing of his application, and who is legally domiciled in this State.

(4) The State Board of Accountancy shall have the authority to establish the standards for determining and shall determine:

(a) what educational institutions offer a four-year accredited college or university course, and

(b) what courses taken at such schools constitute a major in accounting, within the contemplation of this section.

Present Sections 473.08 (1)(b) and (c), and 473.08 (3) and (4) should be deleted in their entirety.

3. *Section 473.19,* Certificates Granted to Holders from Other States.—

The provisions contained in House Bill No. 124, introduced April 7, 1967, are basically acceptable to the Board.

4. *Section 473.26, Florida Statutes*—It is recommended that this section be amended to read as follows:

Section 473.26 Each Member of Firm Must Have Certificate; Management of Office; Practicing Under An Assumed Name; Penalty.—

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It shall be unlawful for any person to engage in the practice of public accounting in this State as a member of a firm unless he shall be the holder of a certificate as a public accountant or a certificate as a certified public accountant, issued by the Board. It shall be unlawful for any office of a public accountant or certified public accountant in Florida to be managed by anyone other than a certified public accountant or public accountant, registered as such in Florida, each office shall be staffed on a full time basis by at least one certified public accountant whose primary responsibility shall be the supervision of the business conducted through that office. No person shall practice public accounting in this State under an assumed name, and no certificate as a certified public accountant shall ever be granted to a corporation. Any person violating any of the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than five hundred dollars or by imprisonment in the County jail for not more than six months.

STATEMENT OF ARTHUR I. HEMMINGS, CHAIRMAN OF THE FLORIDA STATE BOARD OF ACCOUNTANCY, BEFORE THE SUBCOMMITTEE ON BUSINESS REGULATION OF THE GOVERNMENTAL REORGANIZATION AND EFFICIENCY COMMITTEE

MR. CHAIRMAN AND MEMBERS OF THE COMMITTEE:

Since we appeared before this Committee on October 21, 1966, the Supreme Court of Florida has handed down its decisions in the cases of *Mercer* v. *Hemmings* and *Bevis* v. *Bartland*. The effect of the decision in *Mercer* v.

Hemmings is to eliminate the provisions of the Florida Statute requiring two years of residence in Florida as a condition to obtaining a Florida CPA certificate by examination or by reciprocity. Any person who is otherwise qualified for a Florida certificate may take the Florida examination or apply for a certificate by reciprocity upon becoming a bonafide resident of Florida.

In *Bevis* v. *Eastland*, the Court sustained the Board's action denying reciprocal certificates to applicants holding CPA certificates from Pennsylvania, New Jersey, Massachusetts, Missouri, New York and California because those states do not grant "similar privileges" to Florida CPAs. The Court said, however, that "the statute gives the Board wide discretion in the issuance of reciprocal certificates . . . with responsibility to exercise such discretion in a not unreasonable manner."

Exercising the discretion recognized by the Supreme Court, the Board on December 27, 1966, amended its Rule 20-9.04 relating to reciprocal certificates. The amended rule, which became operative on February 24, 1967, substantially liberalizes the provisions for obtaining Florida certificates by reciprocity. In effect, the amended rule provides for issuance of Florida CPA certificates by reciprocity to any person who meets the educational qualifications for a Florida certificate by examination, who has a valid CPA certificate from another state based on the uniform CPA examination and who is a bonafide resident of Florida. Since the operative date of the amended rule, the Board has approved issuance of more than 20 certificates by reciprocity.

In *Mercer* v. *Hemmings*, the Supreme Court again sustained the validity of Section 16 of the Statute and again held that "it is necessary for all partners in Price Water-

house to hold a Florida certificate before the firm can practice as certified public accountants in this state." The Court pointed out, however, that this section of the statute "was certainly not intended to prevent a Florida certified public accountant from making audits within this state under the employment of and for the use of accounting firms in other states in making master audits of clients engaged in interstate commerce."

Under the Supreme Court's decisions and the Board's amended rule relating to certificates by reciprocity, CPAs from other states who meet Florida's educational requirements and become bonafide resident of Florida may obtain Florida certificates by examination or may obtain Florida certificates by reciprocity if the applicant already possesses a certificate from another state based on the uniform CPA examination. It is, therefore, possible for qualified members of all out-of-state firms who wish to organize a Florida firm, to obtain Florida certificates by reciprocity. And under the Supreme Court decision in *Mercer* v. *Hemmings*, a Florida firm so organized or some other Florida firm already established may accept employment from an out-of-state firm as a client and sell the work product of the Florida firm to the out-of-state firm for use in making master audits of its interstate clients.

Still in effect and available are the provisions of Chapter 10 of the Board's Rules which for several years now have recognized and provided for registration of correspondent relationships between out-of-state firms and Florida firms. These Rules seem to afford a practical means by which out-of-state firms may provide a working arrangement for servicing their interstate clients' accounting needs in Florida. Several such correspondent relationships registered with the Board have proved to be workable.

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It therefore seems, to a majority of the Board, that the present statute as construed and affected by the decisions of the Supreme Court of Florida and as implemented by the Rules of the Board now in effect provide a practical means by which individual practitioners and members of out-of-state firms who have the educational qualifications for Florida certificates may obtain Florida certificates so that they may practice in this state and a practical means by which out-of-state firms may service the accounting needs of their interstate clients. In this view no legislative changes in the existing statute are necessary for such purposes.

March 16, 1967

APPENDIX E

A LITTLE CLOSED SHOP

It's a cozy little arrangement.

It's also an intolerable conflict of interest.

The director of the State Board of Accountancy, which is supposed to regulate accountants, is also the director of the Florida Institute of Certified Public Accountants, which is the accountants' trade association.

The chairman of the Accountancy Board is on the institute's executive committee.

Both the state and private groups use the same office space.

Six national CPA firms are now trying to gain permission to practice in Florida. This free enterprise is opposed by the Florida Insitute of Accountants, which apparently does not believe in a free market—at least when it comes to selecting an accountant.

The Board of Accountancy, ever since Florida's accountancy law was passed in 1931, has made it more and more difficult for national firms to maintain offices, agents or staffs in Florida—unless all partners of the non-resident firms are Florida CPAs, a totally unrealistic requirement.

AND NOW IT develops that the board which promulgates those regulations is practically inseparable from the group which has a vested interest in stifling competition.

The magnitude of this conflict is so immense that it shocks even those of us who have become pretty well inured to "regulation" as practiced in Florida.

It's hard to fathom why neither the board nor the institute can see no wrong in this arrangement.

WE HOPE THE Florida Legislature will help them by making it absolutely clear that regulatory agencies exist to help the consumer, not the business regulated.

(St. Petersburg Times, March 19, 1967.)